

Mainstreaming women's human right to political participation

The United Nations' approach in Afghanistan

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1 Introduction

1.1 The subject matter

The subject of this thesis is the United Nations' (UN) approach to promote Afghan women's right to political participation in decision-making forums in the time of peace process in Afghanistan. The thesis discusses the relationship between the strategy of gender mainstreaming and women's human right to political participation. With regard to the UN's engagement in Afghanistan, the first question is whether the field operation is taking substantial consideration to women's human rights standards set forth in the Convention on the Elimination of All Forms of Discrimination against Women (The Women's Convention, CEDAW).¹ Secondly, is the strategy of gender mainstreaming employed in the UN field operation in Afghanistan with regard to women's human right to political participation?

The United Nations approach to enhance the situation of women in Afghanistan is the strategy of gender mainstreaming applied in peace-building efforts. When I started to work on this thesis, I assumed that gender mainstreaming in peace-building efforts involves certainly the mainstreaming of women's human rights into various programs and policies of the UN peace-building mission in Afghanistan. Yet, after having read a large amount of documents on gender mainstreaming, I realized that my assumption about the clear connection between gender mainstreaming and the human rights-based perspective in development was only partly correct. The further this strategy developed over a period of ten years, the less was to find about women's human rights in connection with the strategy of gender mainstreaming. However, the two strategies are closely interrelated. Gender analysis is both part of gender mainstreaming and the human rights-based approach. Gender analysis is necessary to come to grips with

¹ UN Doc. A/RES/34/180 (1979). The Convention was adopted by the General Assembly on 18 December 1979. CEDAW entered into force on 3 September 1981. Today 97 have signed and 114 states have ratified CEDAW. Afghanistan has ratified the Women's Convention on 5 March 2003 and it entered into force on 4 April 2003.

unequal gender relations in all areas and at all levels of society. Women's human rights, such as the right to equal participation and access to resources with men, is an important means to combat gender injustice.

The human rights of women stated in the Women's Convention are the legal framework of the Beijing Platform for Action.² Any action carried out in order to achieve the goals of the Declaration and the Platform for Action needs to comply with the standards set forth in CEDAW. The Beijing Platform for Action has introduced the strategy of gender mainstreaming to twelve areas of concern to women. An important development of the Beijing Conference was precisely the awareness and recognition that women matter in these areas of concern, such as the areas of "armed conflict" and "power and decision-making".³ All areas are important for development issues. Yet, in contrary to the human rights-based development approach, where human rights provide the means for development, human rights are not implemented in the various areas of concern. Instead, a detachment of women's human rights from development concerns through gender mainstreaming is noticeable. Whether one is satisfied with gender analysis, taking notice of needs, concerns and effects or goes one step further in terms of stating the corresponding human rights respectively matters.

1.1.1 Human rights-based approach

A pattern is seen through a number of UN mandates on the strategy of gender mainstreaming. The human rights of women are not mainstreamed into the area of armed conflict, peace and security, but their needs, concerns and experiences. Gender perspectives are mainstreamed, noticeable also in Security Council (the Council, SC) and General Assembly (the Assembly, GA) resolutions, such as references to a gender-sensitive governments etc. This is in no way a negative thing to do, but this approach lacks in my point of view the positive components of the human rights-based development approach. It is evident that the human rights-based development approach provides a strong and effective argumentation tool in priority conflicts. Arguments based on human rights obligations press state actors. Additionally, the most important gift of utilizing the language of human rights in discourse with opponents is the

² UN Doc. A.CONF.177/20, para.7

³ UN Doc. A.CONF.177/20, Letter E and G

empowering of the suppressed people. Patricia Williams has pointed out that for African-Americans, talks of rights as been of great significance:

“Rights” feels so new in the mouths of most black people. It is still so deliciously empowering to say. It is a sign for and a gift of selfhood that is very hard to contemplate restructuring...at this point of history. It is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power...”⁴

Maria Suarez Toro writes about the impact of the human rights-based discourse in Central America:

“We have been able to trace back and re-examine those situations that have characterized the denial of basic human rights in our lives, and this process has contributed to the rebuilding of personhood and the gaining of a sense of empowerment...This work has been instrumental in allowing us to move beyond the limiting portrayals of women-as-victims.”⁵

Further, the methodology of using human rights as argument and seeing them as relevant in any possible agenda holds the United Nations and individual governments accountable for the human rights of women in their own very diverse communities and in the global governance. Acknowledging that women have human rights creates accountability. Accountability is a tremendously important prerequisite to create substantive changes for women throughout the globe since it establishes responsibility of society to women.

1.1.2 Afghanistan as case

Afghanistan is used as a case study because the country tries to establish lasting political and public institutions, which shall represent and include the entire Afghan population, both women and men. The international community through the United Nations supports this process. Such a period of rebuilding appears as a chance and springboard to implement women’s human rights in development programs. The

⁴ Williams, Alchemical notes: reconstructing ideals from deconstructed rights, page 431

⁵ Toro, Popularizing Women’s Human Rights at the Local Level, page 191

situation of Afghan women has, furthermore, been in the center of awareness of the United Nations throughout the last decade. Afghanistan illustrates which role gender mainstreaming plays in peace process and which relationship the strategy has to women's human rights.

The United Nations mission in Afghanistan is part of a peace process. A peace process comprises several tasks, mainly referred to as peacemaking, peacekeeping and peace-building. A comprehensive definition as of what is meant by these terms was given by the UN Secretary General Boutros Boutros-Ghali in 1992 in his Agenda for Peace.⁶ By peacemaking the United Nations organization refers to the aim of resolving existing conflicts. Peacekeeping means to preserve the state of peace in the first phase after fighting has halted. Peace-building entails “...*rebuilding institutions and infrastructure of nations torn by civil war and strife...*”.⁷ The definition of the three terms has survived for over a decade, used by the UN, as well as academic circles, and has been since elaborated.⁸ It was restated in the Report of the Panel on United Nations Peace Operations, the so-called Brahimi-Report.⁹ According to paragraph 13 of the Brahimi-report, peace-building is to date defined as:

*“..activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war. Thus, peace-building includes, but is not limited to reintegrating former combatants into civilian society, strengthening the rule of law (for example, through training and restructuring of local police, and judicial and penal reform); improving respect for human rights through the monitoring education and investigation of past and existing abuses; providing technical assistance for democratic development (including electoral assistance and support for free media); and promoting conflict resolution and reconciliation techniques.”*¹⁰

⁶ UN Doc. A/47/277 – S/24111

⁷ UN Doc. A/47/277 – S/24111, para.15

⁸ Harpviken., Knudsen, and others, Peacebuilding: Lessons for Afghanistan, page 58, <http://www.cmi.no>, 30 June 2002

⁹ UN Doc. A/55/305 – S/2000/009, para.11, 12 and 13

¹⁰ UN Doc. A/55/305 – S/2000/009, para.13. Mr. Lakhdar Brahimi was the Chairmen of the Panel.

The United Nations Assistance Mission in Afghanistan (UNAMA) is entitled as a United Nations Political and Peace-building Mission.¹¹ UNAMA is the field operating body of the United Nations with regard to *peace-building* in Afghanistan and thus performs civil tasks in Afghanistan.¹² The mission has been authorized under chapter VI of the UN Charter by the Security Council in Resolution 1401 (2002) on 28 March 2002 for twelve initial months, which have been prolonged in Resolution 1471 (2003) exactly a year later for an additional twelve months period.¹³ The mandate of UNAMA is not actually included in Resolution 1401 (2002), but the Council refers to a report of the UN Secretary-General in which the mandate and structure of the mission is laid out.¹⁴ The Bonn Agreement of 5 December 2001 is the legal framework of the mission and its mandate. It was signed by different Afghan groups at the UN initiated talks in Bonn in late November 2001. The agreement states the rebuilding process of Afghanistan and includes the role of the United Nations. According to the Bonn Agreement, UNAMA's responsibility is to assist in the implementation of the agreement and, inter alia, to

¹¹ UN Department of Peacekeeping Operations, <http://www.un.org/Depts/dpko/yir/english/page8.html>, 6 September 2003. The Department of Peacekeeping Operations (DPKO) is a section of the UN Secretariat. DPKO provides political and executive direction to UN peacekeeping operations, and maintains contact with the Security Council, troop and financial contributors, and parties to the conflict in the implementation of Security Council resolutions. The Department's mission is to plan, prepare, manage and direct UN peace operations, so that they can effectively fulfill their mandates under the overall authority of the Security Council and General Assembly, and under the command vested in the Secretary-General.

¹² The UN peace process in Afghanistan comprises also *peacekeeping* with military tasks and responsibilities. The Security Council authorized the establishment of an International Security Assistance Force (ISAF) for Afghanistan in its Resolution 1386 (2001) on 20 December 2001. The mandate of ISAF has since been prolonged, last in SC Resolution 1444 (2002), 27 November 2002 for another year. The latest resolution by the SC on ISAF is Resolution 1510 (2003) of 13 October 2003. The Security Council has authorized an expansion of the mandate of ISAF in areas outside of Kabul and its environs, so that UN civilians and of other international organizations can operate in a secure environment, cf. para.1. In addition, the authorization of ISAF is extended for another period of twelve months until fall 2004, cf. para.3.

¹³ UN Doc. S/RES/1401 (2002), para.1, UN Doc. S/RES/1471 (2003), para.1

¹⁴ UN Doc. S/RES/1401 (2002), para.1. Report of the Secretary-General including the mandate of UNAMA: UN Doc. S/2002/278

promote respect for and understanding of human rights.¹⁵ In Annex III of the agreement, the UN is requested to assist with the rehabilitation, recovery and reconstruction of Afghanistan, to help in the carrying out of general elections and the adoption of a new constitution. According to UNAMA's mandate, laid down in paragraph 97 in the report of the Secretary-General, this assistance includes task and responsibilities related to human rights, the rule of law and gender issues, promoting national reconciliation and rapprochement and managing all UN humanitarian relief, recovery and reconstruction activities.¹⁶

The civilian components in a peace-building mission have increased the likelihood of the mission having a direct impact on women and men of the host country. This increases the importance of analyzing the mission's attentiveness to human rights of women. The fact that modern conflicts affect civilians in an unprecedented scale has made the international community aware of the needs and demands of women in war and post-crises scenarios. Is the international community also aware of the human rights of women in war and post-crises scenarios?

1.1.3 The right to political participation

Subsequent to the Security Council Resolution 1325 (2000) of 31 October 2000 on "Women, Peace and Security", the Secretary-General submitted a report with the equivalent title. This report provides an account of the situation of women in the area of armed conflict, peace and security. In the report's paragraph 273 it is stated that: *"One of the most common demands made by women in transition to post-conflict situations is for assistance in enhancing their involvement in elections and public political activity"*.¹⁷ It is not difficult to imagine that women want to be heard in a society that has suffered, often for years, under armed conflict. At her visit in Oslo, Norway, the Executive Director of the UN Development Fund for Women (UNIFEM) Ms. Noeleen Heyzer referred to an inquiry by the Transitional Authority of Afghanistan. In the

¹⁵ The Bonn Agreement, annex II, para.2 and para.6. The Bonn Agreement's full title is: "Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions". I will only refer to it as the Bonn Agreement. See further below in Chapter 6 on UNAMA.

¹⁶ UN Doc. S/2002/278, Chapter VI, litra A, para.97, litra a – c. A further discussion of the UNAMA mandate is placed in chapter 6.

¹⁷ UN Doc. S/2002/1154, para.273, report of the Secretary-General. UN Doc. S/RES/1325 (2002)

inquiry, Afghans were asked what they would put as the first priority on a list of necessary changes. First on that priority list were the rights of women, demanded by both women and men.¹⁸

Women's participation in peace-building, and their involvement in public political activity, can provide a critical contribution to transforming attitudes and practices, structures and competencies.¹⁹ Peace-building requires the transformation of global and societal relations and by including women in decision-making arenas, part of the transformation is already initiated. It is also believed that a society with the capacity to negotiate sustainable peace is of necessity a society in which women, as well as women and men from marginalized groups, are fully represented in decision-making.²⁰ In this regard, the Security Council has adopted Resolution 1325 (2000) on Women, Peace and Security

*“...stressing the importance of their [women's] equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,”*²¹

The lack of good governance in Afghanistan has been evident for several decades. One of the various goals in peace-building in Afghanistan is the establishment of good governance, including a government that is representing and including all groups of society. The government cannot be deemed democratic and fully representative if women do not have the equal right to political participation. It is therefore obvious why Afghan women should be granted the right of political participation on equal terms with men. In this thesis I use the expressions political participation, public participation and

¹⁸ Aftenposten, Økt vold mot afghanske kvinner (Increased violence against Afghan women), 1 October 2003, www.aftenposten.no

¹⁹ El-Bushra, International Alert, Women building peace – sharing know-how, page 34. The report tries to synthesize the findings of the International Alert's project called “Women building peace: Sharing Know-how”, June 2003, http://www.peacewomen.org/resources/NGO_reports/IAWBPKnowHowPaper.pdf, 8 September 2003

²⁰ El-Bushra, International Alert, Women building peace – sharing know-how, page 31, 32.

²¹ UN Doc. S/RES/1325 (2000), the Preamble, para.5, author's addition.

participation in decision-making on equal terms. These expressions have a wide scope. They prerequisite, as well as include, a large number of civil and political rights, as well as human rights of economic and social nature.²²

The subject is revolving around political participation as a human right. Yet, women's lives, as well as men's, do not only take place in one sphere. All is interrelated, and the position of women in society is truly systemic. When the focus is on one specific area which is apparently a women's issue, links to other issues and other aspects of social order or disorder appear pervasive. The closely interwoven socio-economic, legal, political and cultural components in women's lives strands to the problem of women's subordination and to the content of women's rights.²³ Women experience much of their reality at home and in the family. The rights of women in family matters and marriage influence their right to participation in public life. Therefore, when writing about women's political rights, I have chosen to include the rights of women in family life and marriage. Culture has impact on all individuals around the globe. Yet, culture used as an argument to subordination and suppression is often used against women. The right of women to freedom from culture that comprises prejudice on the inferiority of women is, therefore, included in the human rights to political participation discussed in this thesis.

1.2 The role of human rights in gender mainstreaming

The acquisition and assertion of rights is by no means the only solution for the domination of women by men, but it plays an important role both at the individual, local, and international level. Human rights offer a framework that sets down basic principles, values and conceptions of a good society. A report of the UN High Commissioner on Human Rights to the Commission on Human Rights (CHR) states six considerations which calls for the use of human rights discourse as a basis for development. First, human rights provide a legal basis; second, it is obligatory, not optional for states; third, the use of a human rights entry point brings the entire human rights structure to bear; fourth, international human rights should be matched by a corresponding legal basis within states; fifth, human rights require active and effective remedies; and finally, human rights require accountability in national and domestic

²² See further below in chapter 3, number 3.1.

²³ Alston, Steiner, *International Human Rights in Context*, page 159

arenas.²⁴ The legal scholars Hilary Charlesworth and Christine Chinkin write that the human rights discourse offers a recognized vocabulary to frame political and social wrongs. The empowering function of human rights discourse for women, particularly in the international sphere, is a crucial aspect of its value.²⁵ Human rights provide an authoritative language and framework to promote the welfare and protection of women on a global basis. A rights-based approach calls for the construction of specific entitlements on the part of the right holders.²⁶

Human rights are a legitimate and integrated subject in the sector of development. The argument of human rights as a basis for development has been promoted, inter alia, by the Fourth World Conference on Women in Beijing, 1995.²⁷ The human rights approach implies to put people first and promotes human-centered development. Further, the approach recognizes the inherent dignity of every human being without distinction; it stresses the equality between women and men and promotes the equal opportunities and choices for all. In addition, the human rights based approach supports national and international system based on economic equity, equity in access to public resources and social justice. Mutual respect between peoples as a basis for peace, justice, conflict resolution, and sustainable human development is also included in the concept of human rights based development approach.²⁸

In a recently published report of the World Bank on “Breaking the Conflict Trap” it is stated that:

“War retards development, but conversely, development retards war. This double causation gives rise to virtuous and vicious circles. Where development succeeds, countries become progressively safer from violent conflict, making subsequent development easier. Where development fails, countries are at high risk of

²⁴ UN Doc. E/CN.4/1998/21, 15 January 1998

²⁵ Charlesworth, Chinkin, The boundaries of international law – a feminist analysis, page 210 and 211

²⁶ Brautigam, Mainstreaming a Gender Perspective in the Work of the United Nations Human Rights Treaty Bodies, page 390

²⁷ Häusermann, A Human Rights Approach to Development, page 31

²⁸ Häusermann, A Human Rights Approach to Development, page 32

becoming caught in a conflict trap in which war wrecks the economy and increases the risk of further war.”²⁹

Pursuant to that, the Norwegian Minister of International Development Ms. Hilde F. Johnson said at a seminar on Peace-building and Development Co-operation *“Sustainable development promotes peace and sustainable peace promotes development. We have to work on both: peace for development, and development for peace.”*³⁰ As has been pointed out in the World Bank report and by the Norwegian Minister for International Development, peace and development are closely interrelated. Peace-building is both part of peace process *and* development cooperation. Because human rights are placed at the center of development cooperation, it is strongly arguable that human rights also have to be the core principle that guides the operations of a peace-building mission. Traditionally, development cooperation started after the closure of peacekeeping operations. Peace-building, on the other hand, represents development cooperation as peacekeeping efforts are still taking place and are not yet concluded. Human rights are considered a significant component in every activity of peace-building. This is articulated in the Brahimi-report on Peace Operations. The Panel states in paragraph 41:

“...the human rights component of a peace operation is indeed critical to effective peace-building. United Nations human rights personnel can play a leading role, for example, in helping to implement a comprehensive program for national reconciliation. The human rights components within peace operations have not always received the political and administrative support that they require, however, nor are their functions always clearly understood by other components. Thus, the Panel stresses the importance of training military, police and other civilian personnel on human rights issues and on the relevant provisions of international humanitarian law.”

²⁹ Collier, Elliot V.L., and others, Breaking the Conflict Trap – Civil War and Development Policy – A World Bank Policy Research Report, page 1

³⁰ The Norwegian Minister of International Development Ms F. Johnson held the Opening remarks at a Joint Seminar of Norway and Japan on Peace-building and Development Cooperation in Oslo, 25 September 2003.

The human rights embedded in international conventions, like CEDAW, can help Afghan women in their struggle to advance their position in decision-making. The human rights of political participation give political form and shape to the Afghan women's demands to take part in political and public institutions. Further, the right to political participation as a human right of women can attract the national and international attention and link women to an international network of associations and watchdog societies, particularly.³¹ This is especially important since comprehensive peace-building missions have to take into account multiple other concerns and considerations in their daily work with programs and policies.

Women's rights have made an entry into the international human rights agenda. The formal human rights of women have been recognized for some time and are laid down in CEDAW. The international community at the Vienna Declaration and Program of Action, which was adopted by the World Conference on Human Rights in Vienna in 1993, has articulated the gap between the formal recognition of women's human rights and real compliance of actors with these rights for the first time.³² Women's human rights became a rallying point at the conference and the efforts of women's rights activists worldwide finally led to the statement that says: "*Women's rights are human rights*".³³ The conception of women's rights being an integrated part of the mainstream of the United Nations human rights system was repeated more detailed and in stronger wording during the Fourth World Conference on Women in Beijing in 1995 and written down in the Beijing Declaration and Platform for Action.³⁴

The concept of mainstreaming women's human rights developed further and the strategy of gender mainstreaming has been used in the design of policies and programs in all spheres of international concern. Concurrent with the growing awareness of the impact of war and peace process on women's lives, gender mainstreaming is promoted

³¹ Elstain, *Exporting Feminism*, page 126

³² UN Doc. A/CONF.157/23

³³ Gallagher, *Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System*, Human Rights Quarterly 19 (2), 1997, page 283

³⁴ UN Doc. A/CONF.177/20, Platform for Action, Letter I, Human Rights of Women

as the strategy that provides attention to gender perspectives and as the means to place women in the center of peace-building efforts. I will further below discuss the relationship between the strategy of gender mainstreaming in peace-building and women's human rights.³⁵

1.3 An integrated women's human rights perspective

The subject matter of this thesis is placed in the intersection of international public law and women's law. I combine theory and methodology from both international public law and women's law. The starting point for the thesis is the rights of women to political participation in international public law. These rights are held up against the work the United Nations is performing with regard to the advancement of the situation of Afghan women. The thesis has, thus, a rights perspective under which the object of examination is placed. When examining the work of the United Nations, the concerns and experiences of Afghan women are relevant in order to determine what has to be done by the UN to comply with international human rights standards. Women's law sets out to give a voice to women's concerns in international public law. Towards this end, I draw on empirical sources documenting the situation in every day life where religious and cultural norms and practices bar women from political participation. To respond to the actual structure, a holistic approach includes women's civil and political rights, but also economic and social rights. The integrated approach's aim is to supersede the public and private dichotomy known in international public law. Women's right to equality in family matters and the request to eliminate cultural barriers are thus included in the rights perspective of women participation in decision-making.

1.4 Sources and Methods

1.4.1 Empirical Sources

In order to understand the situation of Afghan women, I have used empirical sources. Unfortunately, I did not have the possibility to travel to Afghanistan and stay in the country myself and hence, I had to rely merely on secondary data. I base my writing on apparently thorough studies having to trust the findings stated there. With regard to the Afghan history, culture and women's role in society and family, I rely mainly on a

³⁵ See further below chapter 4.4

country report issued by the Library Congress of the United States.³⁶ I have chosen this report as my main source, since it, in my opinion, appears to be the most reflective, comprehensive and objective report at hand. Further, information about the history of Afghanistan has been found on the United Nations website on News in Afghanistan.³⁷ The question of security of Afghan women is based on reports written by Human Rights Watch, which has used qualitative data interviewing a number of Afghan women and men and data collected through observance in Afghanistan.³⁸ Additionally, the quarterly reports of the Secretary-General to the Security Council and the General Assembly on the situation of Afghanistan³⁹, as well as briefings by the Special Representative of the Secretary-General (SRSG) for Afghanistan, supply this thesis with facts on security issues.⁴⁰ Press briefings by UNAMA have also provided me with information on the situation of security within Afghanistan.⁴¹

The Security Council and the General Assembly adopt resolutions on the impact of the situation in Afghanistan on international peace and security.⁴² I examine these resolutions with a view on their approach to the relationship of the strategy of gender mainstreaming and human rights. The question I ask is whether the strategy of gender mainstreaming involves mainstreaming women's human rights into the field of peace and security.

³⁶ Blood, (ed.), Afghanistan, <http://www.congress.com>

³⁷ Afghanistan and the United Nations, A short historical overview, United Nations News Center, <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>

³⁸ Human Rights Watch, World Report 2003, Afghanistan, <http://hrw.org/wr2k3/asia1.html#defending>, and: Human Rights Watch, Killing You is a Very Easy Thing for, <http://www.hrw.org/reports/2003/afghanistan0703/afghanistan0703.pdf>

³⁹ Reports of the Secretary-General on the situation in Afghanistan: UN Doc. A/56/1000 – S/2002/737, UN Doc. A/57/410, UN Doc. A/57/487 – S/2002/1173, UN Doc. A/57/762 – S/2002/333, UN Doc. A/57/850 – S/2003/754

⁴⁰ Briefings by the SRSG on the situation in Afghanistan: 13 November 2001, 31 January 2002, 24 February 2003, 06 May 2003, 17 June 2003, 13 August 2003

⁴¹ Website: <http://www.unama-afg.org/news/briefing/index.html>

⁴² Security Council Resolutions on the situation in Afghanistan: UN Doc. S/RES/1378 (2001), UN Doc. S/RES/1383 (2001), UN Doc. S/RES/1401 (2002), UN Doc. S/RES/1419 (2002), UN Doc. S/RES/1453 (2002), UN Doc. S/RES/1471 (2003), and General Assembly Resolutions on the situation in Afghanistan: UN Doc. A/RES/56/220, UN Doc. A/RES/57/113

The examination of the approach of the United Nations field operation UNAMA relies mainly on the quarterly reports of the Secretary-General to the Security Council and the General Assembly. However, as I read the documents, I realized that these reports did not provide thorough insight in UNAMA's approach to gender mainstreaming and human rights. I had to rely on press briefings by UNAMA, the internet website of the Islamic Transitional State of Afghanistan⁴³, and a report on Afghanistan issued by the Conflict Security and Development Group of King's College in London.⁴⁴ Besides that, I have read several reports on the situation in Afghanistan issued by, inter alia, the Christian Michelsens Institute, and have regularly read the internet websites of several international and national non-governmental organizations (NGOs) and UN agencies working in Afghanistan.⁴⁵ Further, I have tried to develop a picture of Afghanistan through the reading of numerous UN reports on the situation in Afghanistan since the upcoming of the Taliban regime such as the Interagency Gender Mission to Afghanistan in November 1997.⁴⁶ With regard to the process of adopting a new constitution in Afghanistan in December 2003, the website of the Constitutional Commission of Afghanistan⁴⁷ has been an additional source besides the Secretary-General reports and the SRSG's briefings to the SC and GA. The information on the election process in Afghanistan also depends on the reports of the Secretary-General and on the briefings of the SRSG. Generally, the regular reading of the press briefings of UNAMA, which are posted at UNAMA's website every Thursday and Sunday, have provided me with further insight into the development of the constitutional and electoral process in Afghanistan. I have relied on information given at those press briefings.

⁴³ Website: <http://www.afghanistangov.org>

⁴⁴ The Conflict Security and Development Group of King's College, London, *Afghanistan Report*, A project funded by the Governments of Canada, Germany, Norway, Sweden, and the United Kingdom, <http://ipi.sspp.kcl.ac.uk/rep007/index.html>

⁴⁵ See the bibliography attached to this thesis.

⁴⁶ Website with the report of the Interagency Gender Mission to Afghanistan: http://www.un.org/womenwatch/afghanistan/documents/1997_IGMreport.pdf

⁴⁷ Website of the Constitutional Commission of Afghanistan: <http://www.constitution-afg.com>

1.4.2 Legal sources

In international public law relevant sources are, yet not exhaustively, enumerated in the Statute of the International Court of Justice (ICJ), Article 38 (1) litra a - d.⁴⁸ The provision comprises as the primary means for the determination of international rules of law international conventions, cf. litra a, international customary law, cf. litra b, and general principles of law, cf. litra c. Subsidiary sources are judicial decisions and legal theory, cf. litra d.

1.4.2.1 ICJ statute, Article 38 (1) litra a

The most relevant sources of law for the determination of the content of women's right to political participation are the Women's Convention and the International Covenant of Civil and Political Rights (ICCPR), both being multilateral treaties.⁴⁹ With regard to women's political rights, CEDAW Article 7 and 8 and ICCPR Article 25 are the most important provisions. While CEDAW is the primary source on women's human rights, ICCPR is covering women's political rights as well, referring in Article 25 to the provision on non-discrimination in Article 2, paragraph 1 and containing a provision on gender equality in Article 3. CEDAW's Article 7 and 8, on the other hand, have to be interpreted in the light of ICCPR Article 25, cf. CEDAW Committee's General recommendation no. 23, paragraph 4.⁵⁰ Taking into consideration an Afghan woman's position as a citizen, as a wife and their role and place in the Afghan culture, CEDAW Article 5, Article 9 and Article 16 are as well relevant sources to determine what has to be in place in order to provide women the right to participation in decision-making.⁵¹

The Charter of the United Nations is another vital multilateral treaty applied in the thesis. It is the constituent document of the UN organization. Article 1 of the Charter identifies the purpose of the organization as being, inter alia, to maintain peace and security and to promote and encourage respect for human rights and fundamental freedoms.⁵² The constitutional document further establishes the UN bodies' capacity to

⁴⁸ Ruud, Ulfstein, *Innføring i folkeretten*, page 48

⁴⁹ ICCPR: UN Doc. A/RES/2200 A (XXI)

⁵⁰ For further studies, see also Graff, *Invisible Rights – Invisible Women*, page 22 and 34

⁵¹ CEDAW Article 5 comprises the elimination of prejudice and customary based on the inferiority or superiority of one of the sexes, Article 9 refers to nationality and Article 16 to family and marriage life.

⁵² The UN Charter, Article 1, para.1 and 3 and Article 55 litra c

adopt norms through resolutions and recommendations, be they binding on its members per se or merely morally binding acts.⁵³ Whether or not there is a legal consequence of a General Assembly or Security Council resolution for Member states is determined by the resolution concerned. The normative acts may have the primary objective to ensure the functioning of the United Nations itself by providing for more detailed rules than those contained in the Charter or by implementing those rules.⁵⁴

The Vienna Convention on the Law of Treaties, often referred to as the “conventions’ convention”, is regulating the interpretation of CEDAW, ICCPR and the Charter. Articles 31 until Article 33 outline the guidelines of how to interpret those international treaties. The principal rule is laid down in article 31, stating that:

“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and the light of its object and purpose.”

In regard to “context”, Article 31, paragraph 2 points out that it comprises the text, including the preamble and annexes, plus any agreement relating to the treaty and any instrument which was made by one or more parties in connection with the conclusions of the treaty. The Beijing Declaration and Platform for Action refer to CEDAW as their legal framework. The platform is an agreement related to the Women’s Convention. CEDAW’s provisions are, thus, to be interpreted in the context of the development that has occurred since their adoption in 1979 and the provisions adopted in Beijing in 1995.

1.4.2.2 ICJ statute, Article 38 (1) litra b

International custom is a source of international law.⁵⁵ International customary law comprises certain state practices which are generally recognized as legal obligations of states.⁵⁶ The Universal Declaration of Human Rights’ (UDHR) Article 18, 19, 20 and 21 represent important sources in the interpretation of women’s right to political participation as these provision state freedoms and rights which are prerequisites for the

⁵³ Klein, Sands, Bowett’s Law of International Institutions, page 261, 262

⁵⁴ Klein, Sands, Bowett’s Law of International Institutions, page 279

⁵⁵ The ICJ statutes, Article 38 (1) litra b

⁵⁶ Brownlie, The Principles of International Law, page 4 and 5

participation in public life and decision-making.⁵⁷ The mentioned provisions grant the right to freedom of thought, freedom of opinion and expression, freedom of peaceful assembly and association and the right to take part in the government of his country. Though being a non-binding declaration, the provisions of the document have over the years emerged as generally accepted customary law.⁵⁸

Declarations are formally non-binding documents. The Vienna Declaration and Platform of Action and the Beijing Declaration and Platform for Action are political agreements which I have used as sources in the thesis. The documents, elaborated in multinational conferences, though not being legally binding, have legal weight as they are used in the interpretation of international law. They are important sources for interpretation because they express state practice and developing *opinio juris*, in other words international customary law, cf Article 38 (1) *litra b*, ICJ statute. I have applied the declarations and platforms as interpretation source to find out the content of women's right to participation in decision-making to date.

The strategy of gender mainstreaming is embedded in those declarations. Gender mainstreaming has developed over a period of time within the United Nations, starting at the World Conference on Human Rights in Vienna in 1993 and laid down in the Vienna Declaration Article 18. Since then the strategy has been evolved through the Beijing Platform for Action and the Windhoek Declaration and Namibia Platform of Action. Additionally, various resolutions of UN organs, such as the Security Council resolution 1325 (2000) and the Agreed Conclusion 1997/2 by the Economic and Social Council (ECOSOC) of the UN, are important contributors to the development of gender mainstreaming. The sources mentioned, as well as all additional sources relied on when examining the strategy of gender mainstreaming, are non-legally binding documents for state actors, yet they express what generally has become accepted state practice. The documents are nevertheless binding provisions for subordinate organs within the United Nations in relation to their duty to implement and institutionalize the strategy into their work and their programs and policies.⁵⁹

⁵⁷ UN Doc. A/RES/217 A (III).

⁵⁸ UN Doc. A/CONF. 157/23, Vienna Declaration, Preamble, para.8.

⁵⁹ See further below in chapter 5.2

CEDAW and ICCPR have monitoring organs which have functions only with respect to the treaty creating them. These so-called treaty bodies comment on and communicate with the state about its implementation efforts of the respective treaties in national law and state practice. The principal activity of the CEDAW Committee and the Human Rights Committee (HRC) is the consideration of state reports.⁶⁰ Further, both committees make annually suggestions and general recommendations based on the examination of reports and information received.⁶¹

An account of the existing international human rights law on women's political rights needs to take into consideration the practical use of the law by the HRC and the CEDAW Committee. The state specific comments as well as the general recommendations and comments reflect the treaty bodies own interpretation of their treaty in accordance with the principle of the Vienna Convention Article 31, paragraph 1. Even though treaty texts with their ordinary meaning are the starting point for interpretation, the treaty bodies have stressed that the international human rights treaties are "living instruments" where one has to apply a "dynamic interpretation".⁶² The principle of dynamic interpretation is due to international human rights law having as a goal to protect the interests of individuals and the goal has to be effectively favored by the interpretation of the human rights treaty; especially, since individuals are not part in negotiations on human rights treaties.⁶³ The General comments and recommendations of the HRC and the CEDAW Committee express together with state party dialogues the development of women's human rights and reflect state practice as well as what once might be considered as a legal obligation for a state to fulfill. Thus, these comments and dialogue are part of what can become international customary law, cf. Article 38 litra b.

The CEDAW Committee's General recommendation no. 23 is the most frequent used comment in this thesis dealing with Article 7 and 8 of CEDAW. Other than that, I have relied on the HRC General Comment no. 25 concerning the committee's interpretation

⁶⁰ ICCPR Article 40, CEDAW Article 18

⁶¹ ICCPR Article 40, CEDAW Article 21

⁶² Opsahl, Internasjonale menneskerettigheter – En innføring, page 14 and 15

⁶³ Opsahl, Internasjonale menneskerettigheter – En innføring, page 15

of Article 25. The demand of mainstreaming women's human rights into the human rights system of the United Nations implies that those interpreting the content of general human rights standard need to take into account the recommendations of the CEDAW Committee on the human rights of women. General comments on the principle of non-discrimination, equality of women and men, citizenship and family matters have been applied to examine women's right to participate in decision-making. Comments on state reports are used to illustrate and support the general interpretation of the various provisions.

1.4.2.3 ICJ statute, Article 38 (1) litra d

I have further referred to advisory opinions of the International Court of Justice. Advisory opinions are part of judicial decisions which are accepted as subsidiary sources of international law. Additionally, legal theory, being another subsidiary source of international law, has been widely used in this thesis. I have read literature specifically dealing with women and political rights, and have relied on several theorists in the sector of international human rights, women's human rights, international institutional law, Islam and peace operations.

1.5 The remainder of the thesis

In chapter 2, I give account of the Afghan context. A short overview over the modern political history of Afghanistan is presented. Furthermore, women's political rights in Afghanistan are included and the role of women in society and family. Chapter 3 discusses the international standard of women's right to participate in decision-making. In this chapter, I also discuss the position of the United Nations in relation to international human rights treaties in order to determine UN's obligation with regard to human rights. Chapter 4 deals with the strategy of gender mainstreaming developed by the UN to advance the situation of women. Firstly, a general account of the strategy and its mandates is given, before secondly, gender mainstreaming in peace operations is presented. Thirdly, I discuss the relationship between the strategy of gender mainstreaming and women's human rights. Chapter 5 gives a short account of the relevance of Security Council and General Assembly resolutions for other UN bodies and organs, before it discusses whether the resolutions on peace and security in Afghanistan reflect the strategy of gender mainstreaming. In addition, the question is raised if women's human rights are part of the gender mainstreaming strategy referred

to in these resolutions. Chapter 6 then outlines the employment of the strategy by UNAMA and discusses how the mission works to advance the human rights situation of Afghan women. Recommendations are made in connection with the general elections in June 2004. The last chapter, chapter 7, consists of final remarks on the subject matter.

2 Afghanistan – the context

2.1 The modern history of Afghanistan

The final king of Afghanistan, Mohammad Zahir Shah, ruled over the country from 1933 until 1973. In the post-World War II period the Shah experimented with greater political tolerance and liberalization. Yet, the experiment failed as the new political openness frightened the political elite. In September 1953 the king's cousin, Mohammad Daoud, became prime minister. In March 1963, with the backing of the royal family, King Zahir Shah sought Daoud's resignation on the basis that the country's economy was deteriorating.⁶⁴

The new government both represented and sought change. The single greatest achievement of the 1963 – 1973 decade was the promulgation of the 1964 constitution, a rather liberal political document. Among many noteworthy changes in political thinking, the independent judiciary is one great achievement. It gave rise to heated debate among religious leaders, many of whom supported the existing legal system based on religion. Although religious judges were incorporated into the new judicial system, the supremacy of secular law was established. However, between 1969 and 1973, instability ruled Afghan politics. The parliament was lethargic and deadlocked. Public dissatisfaction over the unstable government prompted growing political polarization as both the left and the right began to attract more members.⁶⁵

In this atmosphere of internal discontent and polarization, Daoud implemented a coup d'état. Daoud's comeback was a return to traditional strongman rule and he was a particularly appealing figure to military officers. His period lasted from 1973 until 1978. Daoud's government was opposed by both the leftist PDPA and traditional ethnic

⁶⁴ Blood, (ed.), Afghanistan, page 13 and 16 <http://www.congress.com>, 10 October 2003

⁶⁵ Blood, (ed.), Afghanistan, page 16 and 17, <http://www.congress.com>, 10 October 2003

leaders. In April 1978 leftist military officers overthrew and killed Daoud and PDPA leader Noor Muhammad Taraki became president.⁶⁶

Late in 1978, Islamic traditionalists and ethnic leaders began an armed revolt, and by the summer of 1979 they controlled much of Afghanistan's rural areas. In September 1978, PDPA leader Taraki was deposed and later killed. He was replaced by his deputy, Hafizullah Amin. He also failed to suppress the rebellion, and the government's position weakened. On 25 December 1979, Soviet forces entered Afghanistan, and took control of Kabul. The rebellion of the traditionalists and fundamentalists intensified and civil war marked the situation of Afghanistan.⁶⁷

The Soviet withdrawal started in 1989. The rebels, however, maintained their fights against the Afghan government and the civil war continued. Eventually, the Taliban, consisting mostly of sons and orphans of mujaheddins, progressed as the strongest group. In late 1994 and early 1995, the Taliban took control of much of southern and western Afghanistan, and in September 1996, the rebels took Kabul. The Taliban soon controlled much of Afghanistan, while the opposition alliance (the Northern Alliance) was holding territory in the north.⁶⁸

The conflict in Afghanistan continued unabated until the end of 2001. Following the 11 September 2001 terrorist attack on the United States (US) by the Afghan-based Al Qaeda group, the United States started its military response in Afghanistan. With the support of the US, the Northern Alliance entered the Afghan cities Mazar-e-Sharif, Herat and then Kabul – a decisive event in the defeat of the Taliban. Meanwhile, the UN organized a meeting of political leaders in Bonn in late November. When it concluded on 5 December 2001, the four groups represented, including the Northern Alliance,

⁶⁶ Afghanistan and the United Nations, A short historical overview, United Nations News Center, <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>, 10 October 2003

⁶⁷ Afghanistan and the United Nations, A short historical overview, United Nations News Center, <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>, 10 October 2003

⁶⁸ Afghanistan and the United Nations, A short historical overview, United Nations News Center, <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>, 10 October 2003

signed an agreement on a provisional arrangement pending the re-establishment of permanent government institutions in Afghanistan, known as the Bonn Agreement.⁶⁹

2.2 Women's political rights in Afghanistan

In the country's newer history, Afghan women have played rather active roles in the political life of Afghanistan. Afghanistan was one of the first countries to ratify the Convention on the Political Rights of Women of 1952, which provides that women shall have all the political rights that are afforded to men, including the right to vote in all elections as well as the right to run for, and to hold public office.⁷⁰ Starting from the 1964 Constitution, but also included in the constitutions of 1976, 1987 and 1990, women were granted equal rights and obligations before the law, without discrimination and privilege.⁷¹ In addition, each of the four constitutions granted *all* citizens the right to vote and the right to be eligible in accordance with the provision of the law.⁷² In 1977, 15 % of the legislators were women, which was a considerable figure for this period of time.

Yet, after the political revolution in 1978, women disappeared more and more from the political landscape, notwithstanding the international treaty obligation and provision in the various constitutions. Except in Kabul where women under the People's Democratic Party of Afghanistan were encouraged to assume more independent public roles, other places in the country the women empowering movement of the past 25 years came to a halt. Conservative mujaheddin leaders believed that sexual anarchy would be the result if women continued to move freely in public and would eventually lead to a society falling into ruin.⁷³

⁶⁹ Afghanistan and the United Nations, A short historical overview, United Nations News Center, <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>, 10 October 2003

⁷⁰ UN Doc. A/RES/640 (VII), 20 December 1952, Article I - III

⁷¹ 1964 Constitution, Article 25; 1976 Constitution, Article 27; 1987 Constitution, Article 33; 1990 Constitution, Article 38. <http://www.afghangovernment.com>

⁷² 1964 Constitution, Article 43; 1976 Constitution, Article 29; 1987 Constitution, Article 48; 1990 Constitution, Article 48. I have tried to allocate a transcript of a former Afghan Electoral Law, but have not succeeded. It would have been interesting to see which criteria voters and candidates had to fulfill, and whether or not it always was possible for women to match those criteria.

⁷³ Blood, (ed.), Afghanistan, page 38, <http://www.congress.com>, 28 August 2003

In 1994 a Muslim “student militia” came forth calling themselves the Taliban (students of Islam). In 1996 they ruled over two-thirds of Afghanistan. The Taliban interpreted the *sharia* in their own strict way with the intention to form a “pure” Islamic state.⁷⁴ Edicts by the Taliban had, inter alia, the objective to keep women as invisible as possible, behind the veil, in *purdah* in their homes, dismissed from work or study outside their homes; basically edicts that banned women from meeting in public places.⁷⁵ According to the report of the UN Interagency Gender Mission to Afghanistan, who visited the country in November 1997, the most obvious and profound violations of the rights of women occurred because their freedom of association was jeopardized.⁷⁶ During the Taliban regime, all regions, also in the northern and central parts of the country not controlled by the Taliban, based their decision-making on structures that were dominated by men. Women were included in some quasi-governmental capacities in the north, and one women’s *shura* functioned in the central province of Bamyan.⁷⁷ In Taliban-controlled areas, women could participate in certain decision-making roles, within a context that the Taliban considered to be both Islamic and traditional.⁷⁸

The Islamic discourse about women’s right to participation in decision-making has revolved around the question whether women can be Head of State due to the election of Benazir Bhutto as Prime Minister of Pakistan in 1988. Also the extended demand for female political participation in the Muslim world, the matter of female involvement in politics on various levels, has become a much debated issue.

None of the verses in the *Quran* bar women from participation in political and public life.⁷⁹ However, the conservative and traditionalistic Muslim scholars, often referred to

⁷⁴ The *sharia* is the body of principles informing Islamic law, including both the teachings of the *Quran* and of the traditional sayings of the Prophet Muhammad, the *hadith*. Ali, Sardar Shaheen, Gender and Human Rights in Islam and International Law, page 42

⁷⁵ About the concept of *purdah* see further below in chapter 2.12.

⁷⁶ Report of the UN Interagency Gender Mission to Afghanistan, 12 – 24 November 1997, page 10

⁷⁷ *Shura* are local councils in Afghanistan dealing with political as well as judicial issues.

⁷⁸ Report of the UN Interagency Gender Mission to Afghanistan, 12 – 24 November 1997, page 11

⁷⁹ Ali, Sardar Shaheen, Gender and Human Rights in Islam and International Law, page 54. The *Quran* is the religious book of the Islam. Muslims believe that it represents the exact words revealed by God through the Angel Gabriel to the Prophet Muhammad. Of some 6000 Quranic verses, only 200 have a

as *ulama*, deny women the right to be Head of State based on a number of *hadiths*.⁸⁰

The most frequently cited one says that: “*A nation can never prosper which has assigned its reign to a woman*”. Using, inter alia, this *hadith*, the *ulama* maintain that a woman cannot hold any position of responsibility in administration, let alone the position of head of the administration. On the basis of this tradition, some Muslim scholars have even said that women cannot even vote as they are imperfect in reasoning.⁸¹ According to these scholars, the *sharia* thus prohibits women leadership and participation in decision-making in Muslim countries.

Other Muslim scholars argue strongly that the above mentioned *hadith* does not fulfill the required rules laid down for determining authenticity of traditions and thus lacks the necessary weight to apply as prophetic rule.⁸² Nevertheless, Muslims quote this *hadith* as “authority” for excluding women from decision-making.⁸³ However, in contrary to the questionable *hadith*, the *Quran*, not forbidding any public and political participation of women, actually commends the Queen of Sheba and her rule in its chapter 27. Hence, scholars argue that the Queen of Sheba would not have found such honorable mention in the *Quran*, if Islam did not permit women as Head of State or holding any other political office.⁸⁴

These two conflicting views have existed alongside and with the emergence of totalitarian regimes in Muslim jurisdiction political participation of both men and women has become minimal. The Islamic tradition of equality has lost ground to the *hadith* literature where women are confined to the “private” familial sphere of life.⁸⁵

legal aspect. The principal object of the Quran is moral in nature. See also: Al-Ashmawi, The Codification of Islamic, page 51

⁸⁰ A *hadith* is a transmitted report of what the Prophet said, did, or approved; it is the prophetic verbal traditions. See also Al-Ashmawi, The Codification of Islamic Law, page 50

⁸¹ Engineer, The Rights of Women in Islam, page 79

⁸² Ali, Sardar Shaheen, Gender and Human Rights in Islam and International Law, page 54, Engineer, The Rights of Women in Islam, page 76 and 77, Roald, Women in Islam, page 187 where she refers to Mernissi, Women and Islam.

⁸³ Ali, Sardar Shaheen, Gender and Human Rights in Islam and International Law, page 55

⁸⁴ Ali, Sardar Shaheen, Gender and Human Rights in Islam and International Law, page 55

⁸⁵ Ali, Sardar Shaheen, Gender and Human Rights in Islam and International Law, page 129

One of the first acts by the Interim Transitional Authority established in the Bonn Agreement was to abrogate all Taliban laws existing. Today and up to the adoption of the new constitution, the Constitution of 1964 represents the legal framework Afghan Authorities have to act in accordance.⁸⁶ Any other decrees on rights to participate in political and civil life have not been issued at the time of this writing by the Transitional Authorities. The Afghan State has ratified, however, the Women's Convention in April 2003. It is thus bound to comply with its provisions, including the right to participate in public life on equal terms with men. No reservations to CEDAW have been made by Afghanistan. The Afghan State is furthermore party to the ICCPR since the state's ratification of the Covenant in 1983.⁸⁷

2.2.1 The Draft Constitution

On 3 November 2003, the Constitutional Commission published the final draft of the new Constitution, which elected representatives shall adopt in December 2003.⁸⁸ The Draft Constitution (the Constitution, the Draft) comprises 160 Articles, divided into twelve chapters. It is a rather liberal and comprehensive legal framework for Afghanistan. It includes civil rights, like freedom of movement in Article 39, freedom of expression pursuant to Article 34, and freedom of assembly and association in Articles 35 and 36.⁸⁹ Article 3 states that no law can be contrary to the religion of Islam

⁸⁶ The Bonn Agreement, Chapter II, Article 1

⁸⁷ A reservation by Afghanistan is made with regard to Article 48 paragraph 1 and 3, according to which countries that are non-member states of the UN cannot join the ICCPR. Afghanistan declares that this contradicts the international character of the ICCPR and therefore, the Covenant should be left open for the purpose of the participation of all states according to the equal rights of all states to sovereignty.

⁸⁸ For the drafting process and adoption, see further below chapter 6.3.2. This discussion of the Draft Constitution is based on the English version of the document which is an unofficial translation. For accuracy, one should refer to official Pashtu and Dari texts. I do not have knowledge of any of these two languages and have, therefore, had to base my writing on the English version. All language versions are published at the website of the Constitutional Commission, <http://www.constitution-afg.com/resrouces/Final%20Draft%20Constitution%20English.doc>

⁸⁹ The state system is based on central and local administrative units. It consists of the central administration and government, provinces with provincial councils, district and villages councils. City affairs shall be administered by municipal councils, cf. chapter eight. The highest legislative organ is the National Assembly with two houses, the Wolesi Jirga (the House of People) and Meshrano Jirga (House of Elders), cf. chapter five. The President is the head of state and is elected by free, general, secret and direct voting for five years for no more than two terms, cf. chapter three. The executive branch is

and the constitutional values. Human rights activists are worried about the role Islam will have in the judiciary and other areas of society. In my point of view, it will be more important to ask which type of Islam, which interpretation of the religion that is employed by the Afghan society.

The Preamble of the Constitution of the Islamic Republic of Afghanistan states that the people of Afghanistan observe the UN Charter and respect the UDHR, cf. the Preamble paragraph 2. Pursuant to paragraph 7 of the Preamble, the government is based on people's will and democracy. Furthermore, in paragraph 8, the people of Afghanistan commit themselves to the creation of a civil society free of oppression and, inter alia, free of discrimination, violence, based on rule of law and protection of human rights ensuring fundamental rights and freedoms of the people.

The Draft Constitution Article 22 paragraph 1 states, “[a]ny kind of discrimination and privilege between the citizens of Afghanistan is prohibited.” The principle of non-discrimination in the Draft is not specific about discrimination against whom, but by stating “any kind of discrimination”, it comprises a wide range of instances and cases. The term “any kind” includes de facto and de jure discrimination, it includes direct and indirect discrimination and it comprises discrimination against any group or any individual.⁹⁰ Thus, the Constitution manages to comply with international human rights instruments. However, a direct reference to the prohibition of discrimination against women would send a stronger signal and provide a more powerful tool in conflicts of priorities and values in the Afghan society.

Pursuant to Article 33, citizens of Afghanistan have the right to elect and be elected. Further conditions and means to exercise this right are regulated by law, cf. Article 33 paragraph 2. The law regulating elections needs to comply with all international human rights treaties ratified by Afghanistan. Afghans have, additionally, the right to form

represented by the Government which ministers are appointed by the President and shall be introduced for approval to the National Assembly, cf. chapter four. The Judiciary, regulated in chapter seven, consists of the Supreme Court, High Courts and Appeal Courts. The Supreme Court heads the judiciary organ of Afghanistan and consists of nine members who are appointed for a period of ten years.

⁹⁰ On those terms, see further below chapter 3.1 and 3.2

political parties, cf. Article 35. According to the Women's Convention Article 7 litra c, Afghan women have to right to participate in political parties. As referred to in chapter 3.2, the CEDAW Committee points out that governments should encourage political parties to adopt effective measures to overcome obstacles to women's full participation and representation.⁹¹

The elections of members to the first house of the National Assembly, the Wolesi Jirga (the House of People) shall be free, general, secret and direct, cf. Article 83 paragraph 1. Electoral constituency and other related issues are determined by election laws, yet, the Draft Constitution requires, pursuant to Article 83 paragraph 6, that the election law should contain measures that provide general and just representation for all the people of the country, and that “...*at least one female delegate should be elected from each province*”.⁹² Women are reserved 32 seats in the Wolesi Jirga which will consists, proportionate to the population of each region, of between 220 and 250 members, cf. Article 38 paragraph 4.⁹³ With regard to the second house, Meshrano Jirga (the House of Elders), the president appoints one-third of the members for a period of five years, cf. Article 84 paragraph 1 no. 3. Paragraph 2 of the Article states that fifty percent of the appointed members by the president have to be women. One-sixth of the Meshrano Jirga will thus be reserved to women representatives. Even though the numbers of reserved places for women in both houses are not very high, these constitutional measures ensure women the possibility to take part in decision-making.

For the observance of human rights, the Constitution establishes in Article 58 the Independent Human Rights Commission of Afghanistan. The second paragraph grants everyone the right to launch complaint to the Commission in case of violations of fundamental rights. The Commission can refer cases to the legal authorities, and it can assist the person defending its rights. In my point of view, it is an important mechanism in the Afghan society that has experienced decades with severe violations of human

⁹¹ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.32, see also chapter 3.2

⁹² Today, there are 32 provinces in Afghanistan.

⁹³ 32 seats of 250 involves a women representation of 12,8 %, while it will be 14,5 % by 220 members of the Wolesi Jirga.

rights. Law will regulate the structure and mode of function of the Human Rights Commission. The Afghan state is obliged to design the law on the structure and mode of function in such a way that no de facto bars exist for women to encounter the Commission.

2.3 Women's role in Afghanistan

A study on the United Nations approach in Afghanistan with regard to women's human right to political participation has to take into account that the lives of women and men are affected by a plurality of norms.⁹⁴ In addition to the formal state law, a wide range of normative orders comes into play to shape Afghan women's legal and social position.⁹⁵ Afghan practices and customs, Islamic law and formal state law all shape the plural system of Afghan law. Legal pluralism recognizes that there are regulatory or normative systems other than the formal law that affect and control people's lives, and various rules govern the behavior of Afghan women and men.⁹⁶ The Afghan state being the source of state law is currently, and will probably be for a longer time, a weak state. Thus, other norms than formal state law can have a large impact on women's human right to political participation. Where state law based on equality is making its mark on the formal legal development, the development in practice can actually take another direction. With a weak Afghan state, other informal norms and practices enforced by other authorities such as warlords, clan leaders and Islamic scholars can supersede formal law based on equality.

Obstacles by certain religious practices deny de facto the right of Afghan women to participate in decision-making. Women, especially in the south and south-east, experience the practice of *purdah*, the seclusion, regardless of the de jure equality between women and men laid down in the constitutions. The concept of the *purdah* includes an insistence on separate spaces for men and women, and prescriptions against interactions between the sexes outside the circle of acceptable male guardians such as the father, brother and son. These restrictions severely limit women's activities,

⁹⁴ Bentzon, Hellum and others, Pursuing Grounded Theory in Law, page 30

⁹⁵ Bentzon, Hellum and others, Pursuing Grounded Theory in Law, page 31

⁹⁶ Bentzon, Hellum and others, Pursuing Grounded Theory in Law, page 41

including the access to their right to public and political participation.⁹⁷ The *purdah* is a manifestation of the fact that Afghan society regards women as the perpetuators of the ideals of the society. Women symbolize honor, honor of the family, community and nation, and must be controlled as well as protected so as to maintain moral purity. Protection is deemed necessary by conservative males because they consider women socially immature, with less moral control and physical restraint.⁹⁸ The role women have in the Afghan society is, thus inter alia, defined by practices, customs and religious

Differences between private and public behavior are significant. In private, the sharing of ideas and responsibilities in many households is not unknown. In some rural areas interrelated responsibilities between men and women establish a bond of partnership building on mutual respect, while in traditional urban lower and middle class homes, men daily leave the house to work and women are more rigidly relegated to purely domestic duties of serving husbands and caring for children.⁹⁹ Yet, mutual respect in the home may also exist here. First when misconduct of women becomes a matter of public knowledge, severe punishment for the behavior is the consequence. The dictates of society on roles and behavioral norms burden women and men. Male prerogatives reside in family economic welfare, politics and relationship with outsiders, while female roles stress motherhood, child socialization and family nurturing.¹⁰⁰ The innate belief in male superiority provides an ideological basis for the acceptance of male control over families. When women do not appear to be controlled in traditional ways, as, for example, when they take up unusual public career or behavioral roles, the community considers that as lost male control that adversely affects the entire family's standing in the community. As a result, urban women are models of discretion in public and rural women appear properly submissive.¹⁰¹

After the fall of the Taliban regime, many were hoping that the situation of women and their position in society would change, more than ever after the severe limitations on

⁹⁷ Lewis, Afghanistan – Gender Roles, Encyclopedia of Women's History, <http://womenshistory.about.com>, 28 August 2003

⁹⁸ Blood, (ed.), Afghanistan, page 38, <http://www.congress.com>, 28 August 2003

⁹⁹ Blood, (ed.), Afghanistan, page 36, <http://www.congress.com>, 28 August 2003

¹⁰⁰ Blood, (ed.), Afghanistan, page 39, <http://www.congress.com>, 28 August 2003

¹⁰¹ Blood, (ed.), Afghanistan, page 35 and 39, <http://www.congress.com>, 28 August 2003

women's lives through the Taliban edicts. To a certain degree, it has happened. Women are more visible in the public life and less confined to the private sphere of family life. Yet, traditional views of how a woman has to conduct herself still have the upper hand in many communities of the country. Sadly, this can be seen in reports documenting violence against women. Human Rights Watch reports numerous incidents where the targeting of women and girls by police and soldiers on the streets not only represents primary abuses, but has secondary effects such as impairing their freedom of movement which eventually keeps many from participating in Afghanistan's political and civic life and reconstruction.¹⁰² In a report, Human Rights Watch refers to a woman that has been intimidated for speaking publicly about women's right and cites her saying that:

*"...I do not believe that it is the families or the Taliban [that women are afraid of]. In my impression, it is the armed men who make women feel unsafe to appear in public... Women see with their own eyes what happens around them."*¹⁰³

Women are marginalized by police and gunmen. Though having the legal right to study, work and go outside without a close male relative, Afghan women say that they are not living these rights of fear to be targeted by armed men. Women are again shoved into their homes.¹⁰⁴ The freedom of movement, an important prerequisite for participation in public and political life, depends on a several different factors in Afghanistan. Firstly, the degree of danger faced when an Afghan woman leaves her home, secondly, the family's perception of that danger, thirdly, the traditional teachings that women and girls should not challenge the decisions of male family members, and fourthly, the Afghan State's failure to protect women and girls from violence, threats, and discrimination.

The United Nations, through its engagement in Afghanistan, has committed itself to the establishment and reinforcement of human rights standard in the process of peace-

¹⁰² Human Rights Watch, Killing You is a Very Easy Thing for, July 2003, page 11, <http://www.hrw.org/reports/2003/afghanistan0703/afghanistan0703.pdf>, 28 August 2003

¹⁰³ Human Rights Watch, Killing You is a Very Easy Thing for Us, July 2003, page 56, <http://www.hrw.org/reports/2003/afghanistan0703/afghanistan0703.pdf>, 28 August 2003

¹⁰⁴ Human Rights Watch, Killing You is a Very Easy Thing for Us, July 2003, page 12 and 13, <http://www.hrw.org/reports/2003/afghanistan0703/afghanistan0703.pdf>, 28 August 2003

building. Women's right to participate in public and political life is a crucial part of the UN commitment. With this commitment follows also the obligation to support the Afghan State in every way in achieving the secure environment women demand.

3 Women's right to political participation

3.1 Introduction

The right to participation and decision-making comprises several provisions that reflect international human rights. This chapter has the objective to give account of women's right to participate and decision-making in a political process. Thus, it will be possible to analyze the work of the UN and UNAMA in relation to the right of women to political participation.

The right to political participation can be found in several human rights instruments, such as CEDAW, ICCPR, and UDHR. In many countries, women have formally the right to participate in public life; notwithstanding, few take actually part in decision-making forums. This phenomenon is often described in the pair of *de jure* and *de facto* discrimination. *De jure* discrimination between women and men is present where women are explicitly discriminated in the legal framework. Discrimination is considered as *de facto* when legislation provides women their human rights, yet social, economic and cultural factors play a part in denying women the opportunity to exercise the rights granted by law.¹⁰⁵ When women are not given the access to candidate lists of political parties because they are not considered to be fit to hold a political office, *de facto* discrimination is evident. The treaty body of CEDAW, the CEDAW Committee, has as priority area the disclosure of *de facto* discrimination.¹⁰⁶

The legal principle of non-discrimination on the grounds of sex is enshrined in international law. It is part of the Charter Article 1 (3) and Article 55 *litra c*, UDHR Article 2, ICCPR Article 2 (1), as well as CEDAW Article 1. The right to equal

¹⁰⁵ Dahl, *Kvinneretten I*, page 50

¹⁰⁶ CEDAW, Article 17. See also Article 18 on country reports and Article 21 on General recommendations. The treaty body of ICCPR, the Human Rights Committee, has followed this line and in its General comment on the non-discrimination principle in ICCPR, no. 18 of 1989, it requires information if a country remains to have any problems of discrimination *in fact*.

treatment between women and men, which prerequisites that an individual is not discriminated on the grounds of gender, can be found in ICCPR Article 3 and the Charter's Preamble paragraph 2.

The Human Rights Committee has pointed out in its General comment no. 25, paragraph 25, that “[f]reedom of expression, assembly and association are essential conditions for the effective exercise for the right to vote and must be fully protected.” The practice of *purdah*, the view that women have to be controlled and the violence against women and girls, are great obstacles for women to experience the crucial conditions of freedom of expression, assembly and association. Human rights of civil and political and social and economic character are necessary to allow the de facto experience of the right to participation. Rights which are necessary for women in order to be able to claim their political rights is the right to hold opinions without interference¹⁰⁷, the right of peaceful assembly¹⁰⁸, the right to freedom of association with others¹⁰⁹ and the right to life¹¹⁰, liberty and security¹¹¹ and freedom of thought and conscious¹¹². Because these rights are considered interrelated and interdependent, they represent the conditions which have to be in place when discussing political participation. In the following, when referring to political participation, I prerequisite that the mentioned rights are de facto granted.

In addition, the interdependence of economic, social and cultural rights and civil and political rights is evident for women around the globe. The question of equality between women and men in family matters and the interpretation of what can be considered a cultural right in contrary to a cultural barrier is eminent for women's right to participate. The Beijing Platform for Action, paragraph 182, thus remarks that “[w]omen may be discouraged from seeking political office by discriminatory attitudes and practices, family and child-care responsibilities...” and in paragraph 185 it is stated that “[i]nequality in the public arena can often start with discriminatory attitudes and

¹⁰⁷ ICCPR, Article 19

¹⁰⁸ ICCPR, Article 21

¹⁰⁹ ICCPR, Article 22

¹¹⁰ ICCPR, Article 6

¹¹¹ ICCPR, Article 9

¹¹² ICCPR, Article 18

practices and unequal power relations between women and men within the family... ”.

This requires from human rights and development activists to have an integrated approach when trying to improve the situation of women. CEDAW recognizes this interrelation. It addresses the social, economical and cultural structures that underline the differences between the sexes. The elimination or modification of culture and traditions that constitute discrimination against women, as well as women’s right to equality in family life and marriage need to be firmly and constantly addressed by human rights activists.

3.2 The right to political participation

CEDAW’s Article 7 deals with women’s human right to participate in political and public life of the country. The provision reads as follows:

“State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”

The equivalent provision in ICCPR, Article 25, is similar, yet formulated in a gender neutral language. It refers to the covenant’s provision Article 2, paragraph 1, implementing the principle of non-discrimination with regard to sex.

In accordance with CEDAW’s Article 7, the equal status of women in political and public life is to achieve by eliminating discrimination against women. Article 1 is the

most important of the non-discriminatory provisions found in the Women's Convention, defining what is meant by "non-discrimination" in the context of the convention.

"For the purpose of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

The striking difference to other human rights instruments' provisions against discrimination is that CEDAW is stressing the "discrimination *against women*", in contrary to discrimination on the grounds of sex, which also includes discrimination against men. The Women's Convention does not cover the issue of gender equality in any of its provisions. Yet CEDAW's ultimate goal is to achieve equality between women and men. This is to be achieved through the enforcement of non-discriminatory legislation.

Not every differentiation is seen as discrimination.¹¹³ To treat human beings differently might be lawful as long as the differentiation is reasonable and based upon objective criteria.¹¹⁴ The question whether a differentiation and distinction is base on reasonable and objective criteria is subject to weighing all relevant circumstances.¹¹⁵ The assessment has to take into account the aims and means of the differentiation and the proportionality between the consequences for the disadvantaged persons and the purpose of the differentiation.¹¹⁶

¹¹³ UN Doc. HR/GEN/1/Rev.6, HRC General Comment no. 18, Non-discrimination, para.13. After having referred to the definition of the term discrimination in CEDAW and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the HRC states that not every differentiation of treatment will constitute discrimination.

¹¹⁴ UN Doc. HR/GEN/1/Rev.6, HRC General Comment no. 18, Non-discrimination, para.13, and McClimans, Political Rights under the UN Women's Convention – The case of Uganda, page 15

¹¹⁵ Nowak, The Prohibition of Gender-specific Discrimination under the International Covenant on Civil and Political Rights, page 107

¹¹⁶ Eide, Opsahl, Equality and Non-discrimination, page 11

Both *purpose and effect* that impair or nullify the exercise of human rights by women are comprised. Thus, a breach of the non-discrimination principle of CEDAW exists even though the States Party and private actors have not intended discrimination, as long as an action or provision has the effect of discriminating women. CEDAW assumes that gender roles are socially and politically constructed and its objective is to change these roles. Most important is that it encompasses, by including purpose and effect, what is generally referred to as *direct* and *indirect* discrimination. Direct discrimination is any treatment that has the intention to discriminate individuals based on the mere fact that they are women. Indirect discrimination is more subtle. It is the effect of the treatment that is decisive. Indirect discrimination against women is stated when the effect is discriminatory, regardless of lack of intent. The Human Rights Committee has in its General comment no.18 endorsed the definition on discrimination in CEDAW's Article 1 and made it applicable in the interpretation of ICCPR's Article 2, paragraph 1.¹¹⁷

CEDAW's non-discrimination term is merely related to the enjoyment of human rights. This is a restrictive wording. However, the scope of what is considered to be a human right has expanded and human rights are not limited, it is a dynamic progress of what is accepted as a human right.¹¹⁸ The scope of the prohibition to discriminate is laid down in Article 2. According to that provision, the States Parties are obliged to pursue by all appropriate means and without delay a policy eliminating discrimination against women. Letters (a) to (g) provide actions to be undertaken by the parties, all supporting the elimination of discrimination against women.¹¹⁹

Pursuant to Article 7, the remaining low number of women participating in public and political life has to be combat by "*all appropriate measures*". The wording leaves States Parties room of discretion of which measures to implement. The CEDAW

¹¹⁷ UN Doc. HR/GEN/1/Rev.6, HRC, General comment no.18, Non-discrimination, para.6

¹¹⁸ ICCPR does not have this distinction between discrimination related to the enjoyment of human rights and discrimination related to other concerns.

¹¹⁹ The information in chapter 3.2 is partly based on notes taken during two undergraduate classes at the Law faculty of the University of Oslo. The first class was attended in fall 2002 on "Women's rights – national variant", and the second class in spring 2003 on "Women's Law and Human Rights".

Committee suggests regularly what can be done to alter the conception of women not being suited to participate in decision-making bodies. To the state of Zambia the Committee recommends to:

“...take measures...supported by special training programmes and awareness-raising campaigns aimed at underlining the importance of women’s participation in decision-making at all levels.”¹²⁰

The term “all appropriate measures” comprises also temporary special measures according to CEDAW Article 4 (1) saying that “[a]doption by State Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination...”. The CEDAW Committee expresses this interpretation when it recommends to Switzerland:

“...to increase the representation of women in elected and appointed bodies, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, in order to realize women’s right to equal participation in public and political life.”¹²¹

Article 4 (1) is part of the group of the corrective provisions that are based on an assumption that in some particular area women are not being treated fairly and that an effort to improve their treatment in that specific area is needed.¹²² Promotion of equality by way of intentional differentiation (giving preference to some and thereby excluding others) is often referred to as affirmative action.¹²³ The purpose of the provision is to use special measures as an element of the policy to achieve de facto equality between women and men. The measures undertaken are not seen as discrimination as defined in Article 1 of CEDAW. ICCPR does not have a provision dealing with means to achieve equality between groups, but its committee comprises the concept of affirmative action

¹²⁰ UN Doc. A/57/38 Supplement no.38, paragraph 241, 27th Session 3 – 21 June 2002

¹²¹ UN Doc. CEDAW/C/2003/I/CRP.3/Add.1/Rev.1, Draft Report, 28th Session, 13 – 31 January 2003, comment to Switzerland, para.41

¹²² Grannes, The United Nations Women’s Convention, page 17

¹²³ Eide, Opsahl, Equality and Non-discrimination, page 31

“...in order to diminish or eliminate conditions which cause or help to perpetuate discrimination...”.¹²⁴

The CEDAW Committee describes in General recommendation no. 23 that where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented. It lists some of the measures which have been utilized by States Parties, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and affirmative action targeting women for appointment to public positions such as the judiciary or other professional groups that plan an essential parting in the everyday life of all societies. According to the CEDAW Committee, the formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life.

Article 7 demands that discrimination against women is eliminated in “*political and public life*”. The concept of “political and public life” is broad. It extends to all areas of public and political life and is not limited to those areas specified in the subparagraphs of the article as it says in Article 7 that State Parties shall “...*in particular...ensure*”. Firstly, the concept refers to the exercise of political power and secondly, to the exercise of judicial, executive and administrative powers. All aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels are covered.¹²⁵ The definition of “political and public life” is referring to all arenas where individuals can be involved in formulating policies with relevance for their lives and society, including trade unions and other associations of the civil society.¹²⁶

Article 7 litra a specifies the protection of women’s right to vote and be eligible for election. These rights must be enjoyed both *de jure* and *de facto*, according to General

¹²⁴ UN Doc. HR/GEN/1/Rev.6, HRC General comment no. 18, Non-discrimination, para.10

¹²⁵ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General recommendation no. 23, para.5

¹²⁶ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General recommendation no. 23, para.5

recommendation no.23, paragraph 18. The CEDAW Committee points out that, while almost all States Parties have adopted constitutional or other legal provisions that grant to both women and men the equal right to vote in all elections and public referendums, in many nations women continue to experience difficulties in exercising these rights. One reason is less access to information compared to men about candidates and party political platforms and voting procedures.

Illiteracy, lack of knowledge and understanding of the political system and about the impact that political initiatives will have upon them, are other factors that impede women's right to vote and run for office. The HRC requires that positive measures are to be taken to overcome illiteracy.¹²⁷ Furthermore, women have often the double burden of work living with financial constraints that eventually limit their time or opportunity to follow electoral campaigns. The CEDAW Committee states that traditions and social and cultural stereotypes discourage women from their exercise to vote. In addition, women's involvement in the public and political lives of their communities is inhibited in some countries. This includes restrictions on their freedom of movement. Further, the lack of confidence in and support for female candidates by the electorate – in some nations women's involvement in politics is considered to be distasteful – stops women from political participation.¹²⁸

According to Article 7 litra b, States Parties are obliged to ensure the elimination of discrimination against women in order to secure their right to participate in formulation of government policies on equal terms with men. The participation of women at the policy level in governments, however, continues to be low. The provision requires, furthermore, States Parties to ensure that women have the right to participate fully in and be represented in public policy formulation in all sectors and at all levels. Women have to be appointed to senior decision-making roles by State Parties. In addition, the nations are responsible to consult and incorporate the advice of groups which are broadly representative of women's views and interests. A further obligation is to ensure

¹²⁷ UN Doc. HR/GEN/1/Rev.6, HRC, General comment no. 25, para.11 and 12

¹²⁸ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.20, litra (a) – (d)

that barriers to women's full participation in the formulation of government policy are identified and overcome.¹²⁹

The CEDAW Committee criticizes the complacency of States Parties with the appointment of women only given a symbolic role. This represents a common constraint to women's full participation and representation in public life. Traditional and customary attitudes constitute barriers as well, which need to be overcome. In the case of Uruguay's combined second and third periodic report, the Committee expresses its concern that the State Party has:

*"...the continuing existence of stereotypes relating to women in the family and society, and... deep-rooted attitudes and conduct based on the assumed superiority of men in the public and private sphere."*¹³⁰

Further, the Committee urges the State Party to:

*"...adopt measures to eliminate social stereotypes in Uruguay. It urges the State party to concentrate on increasing women's participation in all areas, particularly decision-making, and on prevailing on men to share family responsibilities."*¹³¹

Not only States Parties, but also political parties have, according to the Committee, a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success.¹³² Thus, nominating women merely as a symbol for progression in the advancement of women, and then trying to avoid them from actually taking part in formulating policy, is considered to be discriminatory and needs to be eliminated. Measures which help to bring about equal participation by women in senior cabinet, administrative positions and as members of government advisory bodies are enumerated by the Committee as well. For example,

¹²⁹ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General recommendation no. 23, para.24 – 27

¹³⁰ UN Doc. A/57/38, Supplement no. 38, para.192, 26th Session, 14 January – 1 February 2002

¹³¹ UN Doc. A/57/38, Supplement no. 38, para. 193, 26th Session, 14 January – 1 February 2002

¹³² UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.28

when potential appointees are equally qualified, preference will be given to a women nominee, or the adoption of a rule that neither sex should constitute less than 40 per cent of the members of a public body.¹³³

Article 7 litra b also constitutes the right to hold public office and to perform all public functions. This aims at top-ranking positions in cabinets, the civil service and in public administration, as well as in the judiciary and in justice system. Considering Portugal's fourth and fifth periodic report, the Committee expresses the scope of "public life and public office/functions", saying that:

*"The Committee is concerned about the low participation of women in elected and appointed bodies, including as members of parliament and local assemblies, government ministers and secretaries of state, mayors, and high-ranking judges and diplomats."*¹³⁴

All three pillars of politics; the executive, the legislative and the judiciary branch are comprised. In addition, the civil service, which is part of the executive branch of government in most countries, is included, although many of the positions within the civil service are not publicly elected positions. The Committee is concerned that women rarely are appointed to senior or influential positions. At the lower levels or in posts usually associated with the home or the family, the number of women is increasing, yet this is not satisfactory according to the right to be equally treated with men..¹³⁵

The last sub-paragraph of Article 7 litra c states the right of women to participate in non-governmental and public and political organizations. The Committee, when examining the state reports, finds that women are underrepresented or concentrated in less influential roles than men in political parties. Governments should encourage political parties to examine the extent to which women are full and equal participants in political parties activities and, where this is not the case, should identify the reasons for

¹³³ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.29

¹³⁴ UN Doc. A/57/38, Supplement no.38, para.337, 26th Session, 14 January – 1 February 2002

¹³⁵ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.30

this. Political parties should be encouraged to adopt effective measures to overcome obstacles to women's full participation and representation.¹³⁶

The Committee mentions the obligation of other public organizations, like trade unions. These types of organization have to demonstrate their commitment to the principle of gender equality in their constitutions in the application of those rules and in the composition of their memberships with gender-balanced representation on their executive boards. These organizations are vital to increase the number of women in politics, providing women with a valuable training ground in political skills, participation and leadership.¹³⁷

Article 8 of the Women's Convention is also part of women's right to political participation. Pursuant to Article 8:

“States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Government at the international level and to participate in the work of international organizations.”

The content of the provision is similar to that of Article 7. The difference is merely the area of concern, aiming at participation in the international level and international organizations. The international level comprises all areas of international affairs, both economic and military matters, multilateral and bilateral diplomacy, and official delegations to international and regional conferences.¹³⁸

With regard to international organization, the CEDAW Committee points out that many permanent missions to the United Nations and to other international organizations have no women among their diplomats and very few at senior levels. Similar experience is drawn from expert meeting and conferences that establish international and global goals, agendas and priorities, cf. General recommendation no. 23, paragraph 37. In other

¹³⁶ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.32

¹³⁷ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.34

¹³⁸ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.35

words, women are not represented sufficiently in forums where international policy is decided affecting women in all areas of their lives, like economical questions, environmental concerns and population and poverty. The result of an absence of objective criteria and processes for appointment and promotion to relevant positions and official delegations is that women have few opportunities, on equal terms with men, to represent their government at the international level and to participate in the work of international organizations. However, the pattern of globalization of all areas of concern in the world makes the inclusion of women at the international decision-making level increasingly important. Three years before the Security Council adopted Resolution 1325 (2000) on Women, Peace and Security, the CEDAW Committee already recognized the importance of women's participation in peace operation support. The Committee states that:

“The integration of a gender perspective and women's human rights into the agenda of all international bodies is a government imperative. Many crucial decisions on global issues, such as peacemaking and conflict resolution...are taken with limited participation of women. This is in stark contrast to their participation in these areas at the non-governmental level.”¹³⁹

3.3 Nationality

An important part of the right to political participation is the right to acquire and retain one's nationality. Nationality and citizenship are closely interlinked. The full rights of citizenship such as the right to vote and to be elected, is connected to the individual's nationality.¹⁴⁰ In the contemporary world of nation-states, a stateless person lacks both the right to live in a particular place and the positive rights, such as political participation, granted by a state to its citizen. Because nationality is so fundamental, it is essential that it be granted on a non-discriminatory basis. Discrimination regarding nationality is primarily an issue for married women, as governments traditionally have

¹³⁹ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 23, para.39

¹⁴⁰ ICCPR Article 25 refers to “all citizen”, instead of “everyone” as in other provisions of the covenant. Citizenship is considered a reasonable distinction, however, no distinctions are permitted between citizens on the grounds of sex, cf. UN Doc. HR/GEN/1/Rev.6, HRC General comment no. 25, para.3.

considered married women's nationality to be related to, and frequently subsumed in, that of their husbands.¹⁴¹

Article 9 states the right of women to their own nationality, regardless of their husbands' nationality. A prerequisite for women in order to exercise their political rights is to maintain their nationality despite marriage. The provision's paragraph 1 and 2 say:

"1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States parties shall grant women equal rights with men with respect to the nationality of their children."

The CEDAW Committee has commented on Article 9 in its General Recommendation no. 21 on equality in marriage and family relations. In paragraph 6 it says that nationality is critical to full participation in society. Without status as national citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. The Committee states, further, that Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality. The HRC supports this opinion in its General comment no. 19 on protection of the family, the right to marriage and equality of the spouses. In paragraph 7, it notes that no discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage.

These comments reveal the existing interrelationship between women's private life, especially their marital status, and their rights in the public arena of their country. In

¹⁴¹ Freeman, *The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention*, page 155

addition, when depriving women of their nationality because of marriage with an alien, women are not only deprived of a legal and technical matter like nationality, but also of their individuality as a human being.

The area of citizenship is one in which a great conflict exists between religious and customary law, on the one hand, and civil law, on the other.¹⁴² While civil laws grant women equal access to citizenship, religious laws may assign a woman and her children citizenship only on the basis of the husband's status. Another problem, typical of many countries is that a woman must renounce her citizenship upon marrying a foreigner. Hence, it is not surprising that Article 9 of the Women's Convention figures among its "most reserved" substantive provisions. Thirteen States Parties have formulated reservations to this article. Ten of those are Muslim countries.¹⁴³ It is interesting to note that the reservations made by Muslim states do not cite Islamic law as justification for entering this reservation. Domestic legislation, customary practice and assumptions of "proper" gender roles are presented as the reason for these reservations. Reservations can be, yet, an illustration of an "operative" Islamic law formulated in domestic law and articulated at the international level.¹⁴⁴

The Draft Constitution of Afghanistan Article 4 paragraph 4 is an important provision for Afghan women's right to political participation. It states that none of the nation's citizen can be deprived of Afghan citizenship. This precludes the possibility of the Afghan state to relate, and subsume, married women's nationality to that of their husbands. The Afghan state's obligation to ensure women's nationality and by that their citizenship is present especially in connection with Article 6 and Article 7 of the Constitution. The state is obliged to create a society based on protection of human rights, cf. Article 6, and to abide by the UN Charter, international treaties, international conventions, and the UDHR, cf. Article 7. This comprises certainly the Women's convention, which requires that every woman has the right to her own nationality, cf.

¹⁴² Mertus, *State Discriminatory Family Law and Customary Abuses*, page 141

¹⁴³ Reservations are made by: Algeria, Bahamas, Democratic People's Republic of Korea, Egypt, Iraq, Jordan, Kuwait, Lebanon, Malaysia, Morocco, Republic of Korea, Saudi Arabia, Tunisia, Turkey.

¹⁴⁴ Ali, Sardar Shaheen, *Gender and Human Rights in Islam and International Law – Equal Before Allah, Unequal Before Man?*, page 257

CEDAW Article 9. The principle of non-discrimination included in the Constitution in Article 22 paragraph 1, underlines the right of Afghan women to their nationality regardless of their marriage with a non-Afghan national.

3.4 Family life and marriage

According to the CEDAW Committee, the most significant factors inhibiting women's ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children.¹⁴⁵ Excluding women from active participation in public life and confining women to the private spheres of activity is mainly due to cultural traditions and religious beliefs. Thus, CEDAW's principles regulating the core of the private sphere of women, marriage and family, are of great importance for women's possibilities to participate in the public life of their society.

The public and private spheres of human activity have always been considered distinct and have been regulated accordingly. Women's law scholars have pointed out the negative effect of the dichotomy of the public and private sphere on women's human rights in international law.¹⁴⁶ Women have been assigned to the private or domestic sphere, associated with reproduction and the raising of children, and in all societies these activities have been treated as inferior.¹⁴⁷ The public life, in contrast, is respected and honored and comprises a broad range of activities outside the private and domestic sphere. The public life has been historically dominated by men, and men have exercised the power to subordinate women within the private sphere. Women's central role in sustaining the family and society and contribution to development has led to the effect

¹⁴⁵ UN Doc. HR/GEN/1/Rev.6, CEDAW General recommendation no. 23, para.10

¹⁴⁶ For a more thorough discussion on the public/private dichotomy see, inter alia: Romany, Celina, *State Responsibility Goes Private: A feminist Critique of the Public/Private Distinction in International Human Rights Law*, in Cook, Rebecca J. (ed.), *Human Rights of Women*, chapter 4; Charlesworth, Chinkin, *The boundaries of international law – a feminist analysis*, chapter 2 and 7; Charlesworth, *Human Rights as Men's Rights*; Sullivan, *The Public/Private Distinction in International Human Rights Law*, both in Peters, Wolper, (eds.), *Women's rights, human rights*, chapter 13 and 14.

¹⁴⁷ UN Doc. HR/GEN/1/Rev.6, CEDAW General recommendation no.23, para.8

that women have been excluded women from political life and the decision-making process.

Article 16 of CEDAW regulates the principles applying on marriage and family. The premise of Article 16 is that marriage must be a partnership of equals in which each spouse has the opportunity to develop her or his capacities. A large proportion of the reservations to the Convention pertain to this article, the general rational being that it conflicts with personal status laws, which States Parties will not readily challenge or alter.¹⁴⁸ Article 16 is a comprehensive provision with to paragraphs and eight sub-paragraphs. All of them have in one or another way some impact on women's access to the public sphere; yet I will focus on those which more directly are of importance for the participation of women in decision-making forums.

Article 16 (1), litra c reads as follows:

“States parties shall take all appropriate measure to eliminate discrimination against women in all matters relating to marriage and family relations and particular shall ensure, on a basis of equality of men and women:

(c) The same rights and responsibilities during marriage and at its dissolution.”

Paragraph 1 contains the same legal standards as discussed further above with regard to Article 7. The State Party is obliged to take all appropriate measures, such as legislation, in order to eliminate discrimination against women, meaning both direct and indirect discrimination as well as *de jure* and *de facto* discrimination, cf CEDAW Article 1 and Article 4 (1). The State Parties are responsible not only for the appropriate legislation, but also for the observance of the given legislation by personal and artificial persons, cf. “shall ensure”.

Sub-paragraph litra c requires that women and men have the same rights and responsibilities during marriage. This indicates that spouses should carry equal burdens of household and family responsibilities and have equal rights in family decision-

¹⁴⁸ Freeman, The Human Rights of Women in the Family, page 158

making. It confirms the importance of women having full legal capacity, as they cannot fully undertake family responsibilities unless their capacity is recognized.¹⁴⁹ The challenge of the provision is to implement its principle since the share of responsibilities within the family is a matter of negotiation between the two spouses.

The experience of the CEDAW Committee is that many States Parties rely on the application of common law principles, religious or customary law, rather than complying with the principles contained in the Women's Convention. These common law principles restrict women's right to equal status in marriage, invariably. The husband is being accorded the status of head of household and primary decision maker and therefore contravenes the provisions of CEDAW.¹⁵⁰ Having the status of head of household and therefore being regarded as the primary decision maker, men have the ability to suppress women and confine them in their traditionally inferior position in the household. States Parties which see to by legislation the same rights for women and the same responsibilities for men in family relations, at the same time using legislation to counterattack religious and customary traditions upholding the inferiority of women, provide for women the possibility to participate in political and public life of their country.

Private rights, regardless of the marital status of a woman, are another prerequisite for the participation in public life on equal terms with men. Pursuant to sub-paragraph litra g, the States Parties have the obligation to ensure:

“The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;”

Women must have the right to choose a profession or employment that is best suited to her abilities, qualifications and aspirations, cf. CEDAW Article 11. Women's choice to participate in political and public life is part of women's personal right to choose a profession and an occupation. State Parties are obliged to ensure that women have the right to freely choose their profession.

¹⁴⁹ Freeman, *The Human Rights of Women in the Family*, page 159

¹⁵⁰ UN Doc. HR/GEN/1/Rev.6, CEDAW Committee, General Recommendation no. 21, para.17

3.5 Culture and traditions

Above I mentioned the impact of culture and practices on women's right to participation in a country's decision-making process. All women around the world experience their lives as being subjugated to the norms and rules of culture, tradition and religion. These cultural patterns often express the superiority of men over women and the inferior position of women in society as a whole. Consequently, how can an inferior individual be even considered and be eligible to decide on policy matters of society?

With regard Afghan women's human rights to political participation, it is of particular interest to ask whether the right to protection of the cultural and religious identity of an ethnic group constitutes a justifiable reason for differential treatment of women and men.¹⁵¹ Some argue that when interpreting the Women's Convention the values and norms of the respective society should be born in mind.¹⁵² However, CEDAW is to be interpreted according to the principles of international law as laid down in the Vienna Convention on the Law of Treaties Article 31 till Article 33. According to the Vienna Convention a treaty shall be interpreted in good faith in accordance with the ordinary meaning and in the treaties context, as well as in the light of the treaty's object and purpose.¹⁵³ The context refers to the preamble, annexes and protocols to the treaty recognized by the parties. Further, the CEDAW Committees interpretations of the Convention, and interpretations of other treaty bodies on the principle of non-discrimination, are sources of interpretation. The Vienna Convention on the Law of Treaties does not refer to values and norms of various societies as a tool of interpretation.

The Women's Convention's aim is to achieve gender equality by choosing to require the removal of any discriminatory legislation or practice. Article 5, litra (a) is stating that:

“State Parties shall take all appropriate measure:

¹⁵¹ Hellum, Women's Human Rights and Legal Pluralism in Africa, page 40

¹⁵² Hellum, Women's Human Rights and Legal Pluralism in Africa, page 40

¹⁵³ See further above chapter 1.5.1

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;”

Article 2 litra f is partly overlapping with Article 5 litra a by saying that States Parties have to take all appropriate measures to modify or abolish existing customs and practices which constitute discrimination against women.

Even where formal equality exists, all societies assign different roles to women, which are regarded as inferior. In General recommendation no. 3, sixth session, 1987, the CEDAW Committee urges all States Parties effectively to adopt education and public information programs, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women. Prejudices and current practices are often reason why women are not able to participate in decision-making and have little access to influence the policies which affect their lives.

According to the HRC, it is necessary for State Parties to ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equal enjoyment of the right to political participation.¹⁵⁴ Though culture and traditions can be the reason for implementing special measure in order to grant women de facto the right to participate on equal terms with men, culture cannot be used as an argument to violate women’s right to take part in decision-making. Thus, the treaty bodies of the Women’s Convention and the ICCPR do not interpret their respective treaties in the light of, and with consideration to the variety of norms and values that exist around the world.

3.6 The United Nations’ human rights obligation

The primary subjects of international law are states. This is reflected above when discussing women’s right to political participation pursuant to the Women’s Convention and ICCPR. State Parties are the duty-holders and are obliged to respect, to protect and

¹⁵⁴ UN Doc. HR/GEN/1/Rev.6, HRC General comment no. 28, para.5

to fulfill the human rights stated in the respective treaty.¹⁵⁵ Which duties and obligations does the United Nations have with regard to human rights and women's human rights in particular?

International organizations have increasingly emerged as new subjects in modern international law.¹⁵⁶ As a legal personality, the United Nations has the legal capacity to enter into treaties within its field of competence which then will create rights and obligations for the organization. Being generally able to conclude agreements, the opposite side also applies meaning that the United Nations is not bound by international treaties which it has not signed.¹⁵⁷ The UN is not a party to any of the human rights treaties. Correspondingly, the United Nations considers itself not bound by international treaties, including anti-discrimination conventions. In a note to the General Assembly on a report of the Joint Inspection Unit on the administration of justice at the UN, the Secretary-General states that:

*“The [human rights] instruments...are applicable only to the States that have ratified them and not to any intergovernmental organizations to which those States might belong. If States wish to make the provisions or the principles of such instruments applicable to an international organization, they can do so by means of appropriate resolutions in the organization.”*¹⁵⁸

Not being a party to CEDAW and ICCPR, the discussion about the content of women's rights to political participation set forth in those treaties is, thus, at first sight, irrelevant

¹⁵⁵ Eide, Economic, Social and Cultural Rights as Human Rights, page 23. See also CEDAW Article 2 and ICCPR Article 2.

¹⁵⁶ The ICJ concluded in its Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations* that the UN organization represents an objective legal personality in international law. ICJ Report, 1949, page 179, 185 and 187, the Court expressly stated in its conclusions that the UN is an objective international personality, but that this is not the same as saying that its legal personality, rights and duties are the same of those of a State. For more extensive reading, see Seyersted, *Objective International Personality of Intergovernmental Organizations*, Copenhagen 1963.

¹⁵⁷ Schermers, *International Institutional Law*, page 873

¹⁵⁸ UN Doc. A/55/57/Add.1, Comments of the Secretary-General on the report of the Joint Inspection Unit entitled “Administration of justice at the United Nations”, para.2

to the United Nations work in peace support operations. Women's human rights stated in CEDAW and ICCPR are of no relevance to the development of the content of the gender mainstreaming strategy. However, the constituent instrument of the UN, the Charter of the United Nations, has several clear references to human rights and fundamental freedoms. One purpose of the United Nations is to promote and encourage the respect for human rights, see Article 1 (3) and Article 55 litra c. The entities and different bodies of the United Nations are formally bound to its constituent instrument and have, thus, the obligation to fulfill its provisions.

Furthermore, UDHR's provisions on civil and political rights are part of international customary law, and as such are binding for the United Nations bodies and entities. A breach of its provisions, such as the breach of its non-discrimination principle, would lead to protest and could harm the respect for the organization. An international organization as an international person is subject to the rules of international law, including in particular conventional and customary rules.¹⁵⁹ The ICJ stated in an advisory opinion:

*"International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties."*¹⁶⁰

The legal scholars Sands and Klein state that notwithstanding the fact that an international organization is not a party to a human rights treaty or an agreement for the protection of the environment, if the rule contained in an agreement is reflected in customary international law, then it can bind an international organization.¹⁶¹ The principle of non-discrimination is recognized as a customary rule and is relevant to the conduct of the activities of the United Nations.¹⁶² The right to equality between women

¹⁵⁹ Klein, Sands, Bowett's Law of International Institutions, page 456

¹⁶⁰ ICJ Report, 1980, page 73, Advisory Opinion on the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt.

¹⁶¹ Klein, Sands, Bowett's Law of International Institutions, page 459

¹⁶² Schermers., International Institutional Law, page 785

and men is also accepted as a general rule of international law. Both principles are part of fundamental human rights and the United Nations Charter requires the promotion and protection of these rights by the UN. Thus, the UN is bound to these principles.

International human rights are in constant development and are distinguished by their dynamic character. The statement that “women’s rights are human rights” given at the World Conference on Human Rights in Vienna in 1993 is one of many examples of the dynamic development within the international human rights discourse. Violations of women’s rights were emphasized as violations of human rights. When the UN’s purpose of promoting the respect for human rights was formulated in 1945, few probably thought of women’s human rights. Yet, the development has caused that the UN has an obligation to promote the rights of women, such as their right to political participation and taking part in decision-making in public life. In order to be able to determine what is meant by women’s right to participation in decision-making it is necessary to see which standards are set forth in CEDAW and the ICCPR. These standards are part of the UN’s obligation to promote and protect human rights. The United Nations are, in addition, through its Charter Article 55 *litra c*, bound to work for the promotion of women’s political rights, as well as the compliance with the non-discrimination principle, both established in ICCPR, CEDAW, and UDHR.

Despite not being a party to CEDAW, ICCPR and other international human rights treaties, the Charter of the United Nation places the United Nations as a secondary addressee to international human rights treaties. The UN bears the responsibility of assisting and encouraging governments to respect and ensure the enforcement and observance with international human rights treaties they have ratified; and if necessary, the organization has to pressure governments to the fulfillment of their international obligations.¹⁶³ Thus, the UN’s work for human rights is closely related to the provisions of international human rights treaties.

¹⁶³ Nickel, How Human Rights Generate Duties to Protect and Provide, in 15 Human Rights Quarterly Vol. 77 (1993), page 80

4 Gender mainstreaming

4.1 Introduction

The United Nations, its bodies and entities and its Member States, as well as other international actors, have discussed the advancement of the situation of women throughout the globe for almost 30 years. In the 70's and 80's, the policy Women in Development (WID) aimed to integrate women into the existing economic, political and social structures.¹⁶⁴ Still, changes or noticeable improvements of the situation of women were difficult to detect. The United Nations seemed to lack the tool to address and approach the issue of equality between women and men in an effective way. A change of perspective was required. Thus, in the 90's "mainstreaming" was introduced by the Gender and Development (GAD) approach emphasizing on the necessity of restructuring social, cultural and legal gender relations.¹⁶⁵ Simultaneously, focus on women's human rights developed into a new direction. Women's human rights activists had increasingly and nearly unanimous pointed out that the "specialization" of women's rights in the international human rights system had become a "marginalization" of women and their human rights.¹⁶⁶ The United Nations system kept women's rights on the sideline when promoting and protecting human rights. There was a strong call for integrating women's human rights in the mainstream of the human rights discourse.¹⁶⁷

As response to this critique, the strategy of "gender mainstreaming" has been developed. In order to understand which norms and guidelines apply for the UN and

¹⁶⁴ Hellum, Women's Human Rights and Legal Pluralism in Africa, page 23, footnote 3, the author is referring to an article of Rathgeber, E.M., WID, WAD, GAD, Trends in Research and Practice, in the Journal of Developing Areas

¹⁶⁵ Hellum, Towards a Human Rights Based Development Approach, page 3

¹⁶⁶ Gallagher, Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System, Human Rights Quarterly 19 (2), 1997, page 283, and Charlesworth, What are "Women's International Human Rights"?, page 59

¹⁶⁷ Gallagher, Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System, Human Rights Quarterly 19 (2), 1997, page 283

UNAMA when addressing the situation of women in Afghanistan, it is necessary to give account of its content. The following will illustrate the development of the strategy of gender mainstreaming within its mandates.¹⁶⁸ The implementation of the strategy within the UN is examined as well. In addition, account is given about the strategy's role and content in peace processes. Furthermore, the question of the relationship between human rights of women and gender mainstreaming strategy will be discussed and whether gender mainstreaming in peace-building includes the human right of women to political participation.

4.2 What is gender mainstreaming?

The United Nations defines the strategy of gender mainstreaming as:

*“...the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.”*¹⁶⁹

This comprehensive definition was given by ECOSOC in its Agreed Conclusions 1997/2. It establishes the overall principles for gender mainstreaming. Gender mainstreaming represents an analysis of consequences. The conclusions encourage the systematic mainstreaming of gender perspectives into all areas of the work of the UN system, including human rights, humanitarian assistance, disarmament and peace and security.¹⁷⁰ The General Assembly welcomed and endorsed the conclusions of ECOSOC in the Assembly's resolution 52/100 of 12 December 1997.

¹⁶⁸ The documents referred to below are a selection of mandates which I assess to be the most relevant and weighted documents. The assessment is based on the comprehensiveness of the mandate, the frequencies of recitals of those in other documents and the organ which has adopted the mandate.

¹⁶⁹ UN Doc. ECOSOC 1997/2

¹⁷⁰ UN Doc. A/57/731, 13 February 2003, Report of the Secretary-General on Gender mainstreaming in peacekeeping activities, para.4

The demand to integrate women's concerns into the mainstream of the United Nations occurred first in the sector of human rights.¹⁷¹ The Vienna Declaration and Program of Action as adopted by the World Conference on Human Rights in 1993 stated that women's rights are an integrated part of the human rights agenda.¹⁷² Paragraph 18, first paragraph, of the Vienna Declaration reads as follows:

“The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.”

In the Program of Action paragraph 37 deals with the mainstreaming of women's human rights. The first sentence states that *“the equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity”*. The provision includes a regularly and systematically addressing of the issue within the UN system and an increasing cooperation between different entities of relevant bodies and mechanisms, such as the Commission on the Status of Women (CSW) and the Commission on Human Rights.¹⁷³ Mainstreaming women's human rights requires further that treaty monitoring bodies, such as the HRC or the Committee of the International Convention on the Elimination of All Forms of Racial Discrimination, include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data, cf. Vienna Platform of Action, paragraph 42. In that way, states are forced to review the situation of women in their country and the UN treaty body system itself raises more awareness to women's human rights situation.

Two years after the Vienna Conference on Human Rights, the United Nations Fourth World Conference on Women in Beijing adopts the Beijing Declaration and Platform

¹⁷¹ At that time, men's concerns were not part of the developing strategy of gender mainstreaming.

¹⁷² UN.Doc A/CONF.157/23

¹⁷³ UN Doc. A/CONF.157/23, para.37, 3.sentence

for Action in 1995.¹⁷⁴ The document represents the shift from a women-specific approach to a gender approach. It develops the gender mainstreaming strategy further. The Platform for Action broadens the areas of concern beyond human rights. It addresses gender mainstreaming in twelve critical areas of concern which all have their causes, consequences or solutions in the categories of equality, development and peace.¹⁷⁵ The larger scope of the strategy demonstrates that the gender mainstreaming makes explicit the need to link gender with other issues than merely human rights, such as political participation and peace process.¹⁷⁶

Concerning women and their human rights, the Beijing Platform for Action consolidates the policy set forth during the Vienna Conference on Human Rights. The most comprehensive statements on gender mainstreaming can be found in chapter IV, letter I on Human Rights of women. The international community's delegates at the Beijing conference stress that the human rights of all women must form an integral part of the United Nations human rights activities. The equal status and the human rights of women must be integrated into the mainstream of United Nations system-wide human rights activities. The document demands that the issue of human rights of all women is given regular and systematical attention by relevant bodies and mechanisms of the United Nations.¹⁷⁷ The human rights of women are conferred to all UN human rights bodies and organs.

Other relevant areas of concern are “women in power and decision-making” and “women and armed conflict”.¹⁷⁸ With regard to women in power and decision-making, the United Nations and other actors are asked to promote an active and visible policy of mainstreaming a gender perspective into all policies and programs that address the

¹⁷⁴ UN Doc. A/CONF.177/20

¹⁷⁵ The twelve areas of concern are: Women and poverty, Education and training for women, Women and health, Violence against women, Women and armed conflict, Women and the economy, Women in power and decision-making, Institutional mechanisms for the advancement of women, Human rights of women, Women and the media, Women and the environment, The girl child.

¹⁷⁶ Gaer, *Mainstreaming a Concern for the Human Rights of Women – Beyond Theory*, page 98, and Brautigam, *International Human Rights Law: The Relevance of Gender*, page 19

¹⁷⁷ UN Doc. A/CONF. 177/20, para, 221

¹⁷⁸ UN Doc. A/CONF: 177/20, Letter G and E

inequality between women and men in the sharing of power and decision-making at all levels. The various actors have to assure that an analysis is made of the effects on women and men of the respective policies and programs.¹⁷⁹

The area of concern on women and armed conflict overlaps to a certain degree with provisions in the area of women in power and decision-making. The Platform for Action recognizes that:

*“If women are to play an equal part in securing and maintaining peace, they must be empowered politically and economically and represented adequately at all levels of decision-making.”*¹⁸⁰

An active and visible policy of mainstreaming gender perspectives into all policies and programs is the means to the empowering of women in political decision-making in peace-building times, cf. Platform for Action paragraph 141. A distinguished feature for the Platform for Action is its emphasis on action. The United Nations is requested to take action to promote equal participation of women and equal opportunities for women to participate in all forums and peace activities at all levels. Further, a gender perspective has to be integrated in the resolution of conflicts.¹⁸¹

The Platform for Action sets out a two-pronged approach.¹⁸² It endorses specific actions, policies and programs for women addressing disadvantages and inequality in the various areas of concerns, somewhat as efforts to deal with the symptoms.¹⁸³ At the same time all these policies and programs must be based on an assessment of their implications for women and men. Based on this requirement, the goal of gender equality is become the responsibility to all institutions working in the specific area of concern. As Baumgartner puts it: *“All policies and programmes are instrumental for the achievement of gender equality, through gender mainstreaming.”*¹⁸⁴

¹⁷⁹ UN Doc. A/CONF. 177/20, para. 189

¹⁸⁰ UN Doc. A/CONF. 177/20, para.134

¹⁸¹ UN Doc. A/CONF. 177/20, para.142 a and b

¹⁸² Brautigam, International Human Rights Law: The Relevance of Gender, page 20

¹⁸³ Brautigam, International Human Rights Law: The Relevance of Gender, page 20

¹⁸⁴ Brautigam, International Human Rights Law: The Relevance of Gender, page 20, 21

Angela E.V. King, the UN Special Adviser to the Secretary General on Gender Issues and the Advancement of Women, states that gender mainstreaming entails bringing the perceptions, experiences, knowledge and interest of women as well as men to bear on policy-making, planning and decision-making.¹⁸⁵ This is in fact, a prominent item of gender mainstreaming. In contrary to “targeted interventions” that have as their primary goal the narrowing of gender gaps that disadvantage women by designing specific policies fitting to that specific area of concern, gender mainstreaming is focusing on *any* planned action’s impact on both women and men in order to identify where there are opportunities to narrow inequalities and to decide on the approach to be taken.

The integral dimension of both genders’ experiences implies that gender equality issues are situated at the centre of analyses and policy decisions. The experiences and concerns of women and men regarding the sector area or issues being dealt with are generally referred to as gender perspectives.¹⁸⁶ These gender perspectives are a result of an analysis of the impacts a future action might have on women and men based on their concerns and experiences. Men are made part of the analysis in order to find out which male views on the concerned issue might not only lead to unequal outcomes, but also perpetuate inequality between women and men. When reading about gender mainstreaming, especially case studies on earlier multidimensional peacekeeping operations, it is evident that women are at the center of the attention while little can be read about men’s concern.¹⁸⁷ Gender mainstreaming, today, may be devoting more attention to the needs and experiences of women. The reason given is that men’s needs are already so well integrated into most policies and programs that they are not a matter

¹⁸⁵ King, Angela E.V. Special Representative of the Secretary General on Gender Issues and the Advancement of Women, Office of the Special Adviser on Gender Issues and Advancement of Women, Gender Mainstreaming – An Overview, Foreword, page V, <http://www.un.org/womenwatch/osagi>

¹⁸⁶ Hannan, Principal Officer on Gender Mainstreaming, Office of the Special Adviser on Gender Issues and the Advancement of Women, For the Technical Review Meeting – Assessment of Gender Mainstreaming and Empowerment of Women in Sub-Saharan Africa, A Review of UNDP Supported Activities, <http://www.un.org/womenwatch/osagi>

¹⁸⁷ Lesson Learned Unit, Department of Peacekeeping Operations, Mainstreaming a Gender Perspective In Multidimensional Peace Operations, July 2000, page 3, <http://www.un.org/Depts/dpko/lessons/PBPUOnline>

of consciousness. As Judith Hicks Stiehms puts it: “*At present women’s needs are more likely to require explicit recognition.*”¹⁸⁸ The Lesson Learned Unit of the Department of Peacekeeping Operations (DPKO) expects that men’s special needs will become more obvious and be more consciously weighed as women’s concerns receive more attention.¹⁸⁹ Mainstreaming gender perspectives is further seen as a process. Gender mainstreaming is the way, the mean, while gender equality is the goal, the end and objective.

4.2.1 The implementation of gender mainstreaming

The strategy of gender mainstreaming is two-sided, both sides being interlinked with each other. It has an internal side which demands from state actors, international organizations and NGOs to apply the strategy within its organs and bodies, and an external side when programs and policies are implemented to serve others. The mandates on gender mainstreaming obligate the UN organization to act in compliance with the strategy both internally and externally. Part of the internal side is monitoring the implementation of gender mainstreaming. Related to that is the question who is monitoring whom, or who is accountable and responsible for the implementation of gender mainstreaming.

The Beijing Platform for Action place the responsibility to act in accordance with the idea of gender mainstreaming on *relevant UN bodies* in the respective area of concern. In the sector of peace and security, for example, the DPKO will be responsible of peace operations including the strategy of gender mainstreaming in their operational principles. And within the field of human rights, the Vienna Platform of Action states that the integration of human rights of women is the responsibility of *relevant UN bodies and mechanisms*.

Gender mainstreaming has developed into a management strategy within the UN organization. Pursuant to the mentioned legislative mandates, the Secretary-General issued a letter, dated 13 October 1999, to the heads of all UN bodies, organs and

¹⁸⁸ Stiehms, Women, Peacekeeping and Peacemaking: Gender Balance and Mainstreaming, page 42

¹⁸⁹ Lesson Learned Unit, Department of Peacekeeping Operations, July 2000, Mainstreaming Gender Perspectives in Multidimensional Peacekeeping Operations, page 3

agencies. In the letter, the Secretary-General charges the heads of entities with taking full responsibility for translating the concept of gender mainstreaming into programmatic and operational reality across all areas under their purview and with ensuring that analytical reports and recommendations on policy or operational issues were presented for intergovernmental decision-making in a manner that fully accounted for gender differences.¹⁹⁰ The management level of the United Nations entities received, in other words, a directly addressed obligation to implement the strategy of gender mainstreaming in their area of concern and the notion of accountability to meet this obligation. Policy considerations support the concept that the highest management level of any unit is responsible for the unit's implementation of gender mainstreaming including the head of a peace operation.

Besides placing responsibility on certain staff members, it is essential for the implementation of a new strategy in a large organization like the UN that the management level is held accountable for their actions with regard to gender mainstreaming. Accountability ensures that senior staff members view the work with gender mainstreaming as important and communicate this view on to their staff in line. Reports and policy recommendation to intergovernmental bodies create the sense of accountability and provides a tool for monitoring the implementation process. Yet, information on control mechanisms within the UN has been difficult to detect. The attention to the necessity of control mechanisms exists, but monitoring and documentation, as well as evaluation progress, is still rudimentary.

The overall responsibility of monitoring and evaluating the United Nations' approach in the implementation of the strategy lies with the Office of the Special Adviser on Gender Issues and the Advancement for Women (OSAGI).¹⁹¹ OSAGI provides the assessment of, and reporting on, progress in different parts of the Secretariat, the regional commissions and the United Nations Offices in Geneva, Vienna and Nairobi and peace

¹⁹⁰ UN Doc. A/57/731, Report of the Secretary-General on Gender Mainstreaming in peacekeeping activities to the General Assembly discussing administrative and budgetary aspects of financing of the UN peacekeeping operations, page 3. It was not possible at to get hold of a copy of the letter itself, therefore the references to the letter rely on the above mentioned document.

¹⁹¹ <http://www.un.org/womenwatch/osagi/monitoringandevaluation.htm>, 17 September 2003

operation missions. The Special Adviser takes up gender mainstreaming in all missions and entities in the United Nations system and reports on progress to the Secretary-General.

Substantial progress can be found in the field of human rights regarding the attention to gender perspectives. The work of the human rights treaty bodies, thematic and country rapporteurs, as well as the resolutions of the Commission on Human Rights, is increasingly informed by gender analysis. ECOSOC has decided in its Resolution 2001/41 to have a regular item on “Mainstreaming a gender perspective into all policies and programmes of the United Nations system”. The objective is to monitor and evaluate achievements made and obstacles encountered by the UN system, and to consider further measures to strengthen the implementation and monitoring of gender mainstreaming within the organization. The monitoring is based on an annual report of the Secretary-General on the “Follow up to, and progress in the implementation of, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly”. In the report, the Secretary-General gives account of the various UN intergovernmental commissions’ attention to gender issues in their field of concern.¹⁹² The subsequent resolution by ECOSOC does then compliment on the gender mainstreaming efforts of the various commissions and urges the UN system to continue to implement gender perspectives in all their work.¹⁹³

4.3 Gender mainstreaming in peace operations

As a result of the Beijing Conference and the Platform for Action, several bodies, organs and entities responsible for questions regarding women or peace and security started to develop the content of gender mainstreaming in that field. The outcome is expressed in specialized mandates on women and peace operations.

4.3.1 The Commission on the Status of Women

The Commission on the Status of Women proposes in its Agreed Conclusions in 1998 several actions to increase the participation of women in peace operations.¹⁹⁴ First of all, the United Nations, among other actors, should increase, also by using measures of

¹⁹² For example the Commission on Human Rights or Commission on Sustainable Development

¹⁹³ UN Doc. E/2003/L.24/REV.1

¹⁹⁴ UN Doc. E/CN.6/1998/12 - E/1998/27

affirmative action, women's participation and leadership in decision-making and in preventing conflict. This includes both women working for the United Nations entities, or local women in regional organizations. Gender perspectives need to be mainstreamed into peace-promoting activities at all levels. This is only possible through gender analysis and the encouragement of the participation of more female personnel at all levels, in particular at senior or high levels in field missions. The policies must then be monitored and reviewed as appropriate. In addition, it is asked for promoting a gender balance and gender expertise in all relevant international bodies, at all times. The recognition of the importance of fully involving women in designing rehabilitation policies in post-conflict situations is seen as a vital point to integrate women. The peace-building activities need to include gender perspectives and before any activity is started an analysis on the impact on women and men, is demanded.¹⁹⁵

4.3.2 The Windhoek Declaration and the Namibia Plan of Action

In May 2000 the DPKO convened a seminar, hosted by the Government of Namibia, on mainstreaming a gender perspective in multidimensional peace support operations. The Windhoek Declaration and the Namibia Plan of Action address gender mainstreaming from the initial stages of negotiations for a ceasefire and/or peace agreement and establishment of a mandate for a peace operation, to decisions on the leadership, structure and resource allocation for a mission.¹⁹⁶

The Declaration and Plan of Action are based on the DPKO Lesson Learned Unit study on Mainstreaming Gender Perspectives in Multidimensional Peacekeeping Operations. It is one of the most comprehensive studies that were received by the seminar preceding the Windhoek Declaration. The Lesson Learned Unit of DPKO worked three years on it. Focusing on previous UN peacekeeping missions in Bosnia, Cambodia, El Salvador, Namibia and South Africa, the aim was to gain insight with regard to gender.¹⁹⁷ The Windhoek Declaration and Namibia Plan of Action have become important documents for the implementation of gender mainstreaming in peace operations.

¹⁹⁵ UN Doc. E/CN.6/1998/12 – E/1998/27, chapter II, litra C, para.

¹⁹⁶ UN Doc. A/55/138 – S/2000/693

¹⁹⁷ Carey, *Implementing gender sensitivity norms in peacekeeping*, page 53, and Olsson, Tryggestad, (eds.), *Women and International Peacekeeping*, Introduction, page 2

The Declaration states that the principle of gender equality must permeate the entire mission, at all levels, thus ensuring the participation of women and men as equal partners and beneficiaries in all aspects of the peace process - from peacekeeping, reconciliation and peace-building. The aim is that in a later situation of political stability women and men play an equal part in the political, economic and social development of their country.¹⁹⁸

The Namibia Plan of Action provides concrete recommendations of how to mainstream a gender perspective in multidimensional peace support operations. Regarding participation in decision-making, paragraph 1, first sentence asks for equal access and participation by women and men in the area of conflict resolution at all levels and stages of the peace process. The second sentence recommends that women are an integral part of the negotiating team and process in peace agreements. Other than these provisions on peace negotiation and agreement, none deal with the question of supporting and enhancing participation of local women in the process of rebuilding a nation. The focus of the Plan of Action is directed at the tasks and responsibilities of the United Nations staff and units.

The mandate of a peace support mission should, pursuant to paragraph 2, include a senior adviser on gender mainstreaming. Furthermore, the provision requires that Security Council resolutions setting up and extending peace support operations should incorporate a specific mandate on gender mainstreaming. The third sentence of paragraph 2 states that all mandates for peace support missions should refer to the provisions of CEDAW, as well as other legal instruments. With regard to the leadership of peace missions, paragraph 3 primarily deals with gender balance within the peace support operation, and the way of how to recruit female candidates to positions in the mission.

According to paragraph 8 of the Plan of Action, accountability for all issues relating to gender mainstreaming in the field level should be vested at the highest level, meaning the Secretary General's Special Representative. The Plan of Action recommends, further, that monitoring and evaluation mechanisms to assess the implementation of the

¹⁹⁸ UN Doc. A/55/138 – S/2002/693, The Windhoek Declaration, para.2 and 3

UN gender mainstreaming objectives should be established at UN Headquarters and at peacekeeping missions, in consultation with the Office of the Special Adviser on Gender Issues and Advancement of Women. The periodic reports of the Secretary General are suggested to include progress on gender mainstreaming throughout peace missions.¹⁹⁹ With regard to peace-building operations, the Namibia Plan of Action states that UN Headquarters should monitor and evaluate the implementation of UN gender mainstreaming objectives, in consultation with the Office of the Special Adviser on Gender Issues and Advancement of Women. The periodic reports of the Secretary-General on peace missions to the SC and the GA are furthermore suggested to include progress on gender mainstreaming throughout peacekeeping missions.²⁰⁰ The reports of the Secretary-General to the SC and the GA appear to be the only way which provides a control mechanism as peace operations have to inform on its efforts in gender mainstreaming to the Secretariat. In addition, the briefings of the SRSG to the SC represent a form of control mechanism.²⁰¹

4.3.3 The Security Council Resolution 1325 (2000)

Security Council Resolution 1325 (2000) on Women, Peace and Security is considered to be a major breakthrough of gender mainstreaming in the area of peace and security. It represents a comprehensive mandate of a primary UN organ and highlights the importance of incorporating gender perspectives in all areas of peace support operations and calls for specific actions in relation to peacekeeping operations. The resolution provides a number of important operational mandates, with implications for both

¹⁹⁹ UN Doc. A/55/138 – S/2002/693, Namibia Plan of Action, para.8, first and third sentences. The provisions of the Namibia Plan of Action encounter several other activities which promote the implementation of gender mainstreaming in peace support operations. Paragraph 4 is dealing with the issues of planning a mission and the structure and resources of the mission. Paragraph 5 considers the recruitment of personnel with regard to more female civilian personnel and female military and civilian police forces. Paragraph 6 is covering the question of training of staff in the gender mainstreaming strategy, while paragraph 7 deals with procedural matters within the UN system so that gender mainstreaming is implemented more effectively. Paragraph 9, finally, requires that all possible means have employed to increase public awareness of the importance of gender mainstreaming in peace support operations.

²⁰⁰ UN Doc. A/55/138 – S/2002/693, Namibia Plan of Action, para.8

²⁰¹ Some of the briefings on Afghanistan and UNAMA have also been done by the Under-Secretary-General for Peacekeeping, Mr. Guéhenno, which is the head of DPKO.

individual Member States and the United Nations system. Resolution 1325 (2000) is a framework that makes women, and a gender perspective, relevant to the reconstruction war-torn societies. It makes the pursuit of gender equality relevant to every single Council action, ranging from mine clearance to elections to security sector reform.²⁰²

The most explicit mandate on gender mainstreaming is found in paragraph 5. The Council expresses its willingness to incorporate a gender perspective into peacekeeping operations, and urges the Secretary-General to ensure that, *where appropriate*, field operations include a gender component.²⁰³ It is difficult to envision a field operation where a gender component is not appropriate. Paragraph 8 continues pursue of adopting a gender perspectives in field operations. It calls on all actors which are involved in implementing peace agreements, to adopt a gender perspective. They are asked to take into consideration the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction, cf. *litra a*. Measures ought to be taken that support local women's peace initiatives for conflict resolution and involve women in all of the implementation mechanisms for peace agreements. In addition and last but not least, the SC is calling for measures that:

*“...ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary”.*²⁰⁴

The Council, furthermore, expresses its commitment and willingness to ensure that missions sent by the Council take into account gender considerations and the rights of women, including through consultation with local and international women's groups, cf. paragraph 15. The various peace missions of the United Nations have received the obligation to involve women in their work in the field. In addition, any report by the Secretary-General on peace missions' outcome, is requested to include reporting on gender mainstreaming and other aspects relating to women and girls in the particular

²⁰² Rehn, Sirleaf, *Women, War and Peace*, page 3

²⁰³ The author's emphasis.

²⁰⁴ UN Doc. S/RES/1325 (2000), para.8, *litra b*

mission.²⁰⁵ This provides a control mechanism on whether the provisions on gender mainstreaming are implemented in the peace operation concerned. Further, the notion of accountability is strengthened when the respective field management has to report on that matter to the SC.

4.4 Women's human right to political participation and the strategy of gender mainstreaming in peace operations

Above I have given account of the content of the strategy of gender mainstreaming in the field of human rights, women in power and decision-making and in the field of women in armed conflict, peace and security. The human rights development approach, just like the strategy of gender mainstreaming, takes gender analysis as the starting point to clarify the needs, concerns and experiences of women. However, does gender mainstreaming in the area of peace process refer to the relevant human rights which complement the various needs and concerns of women?

The understanding that the gender mainstreaming strategy is relevant in several areas of concern and not only in the area of human rights, as it developed up to the Fourth World Conference on Women in Beijing, has had an impact on the position of human rights used as arguments to enhance the situation of, and empower, women. Women's human rights are not an issue in the area of "women in power and decision-making" and "women and armed conflict".²⁰⁶ This started already during the Vienna Conference on Human Rights, when the responsibility for the implementation of the strategy of mainstreaming women's human rights *only* was referred to the different human rights bodies and organs of the United Nations. A different approach would have been to develop a strategy that requires mainstreaming women's human rights in all the areas which concern women. UN bodies dealing with peace and security, such as the Security Council or the DPKO, would have been obligated specifically to pay attention to the human rights of women relevant to the particular sector they are working in. Awareness about the actual rights women have, as they are stated in CEDAW, would improve significantly.

²⁰⁵ UN Doc. S/RES/1325 (2000), para.16

²⁰⁶ UN Doc. A/CONF: 177/20, Letter G and E

The strategy as presented in the Beijing Platform for Action conceals the fact that in the area of peace-building women actually have the *human right* to take part in decision-making, cf. CEDAW Article 7 and 8, ICCPR Article 25. The United Nations is obligated to promote respect for, and observance of, the human rights. The chosen strategy gender mainstreaming in the area of peace should have included the human rights-based approach. Instead of placing human rights as an integrated part in all fields of development, this approach is undermined by the detachment of the field of women, peace and security from the human rights agenda. The language of human rights as a means of argumentation to empower women loses influence. CEDAW and the ICCPR, as well as other important international legal instruments on human rights, are not implemented in the gender mainstreaming strategy in peace operations, even though, in conflicts about policy priorities, human rights of women provide a stronger argument than women's concerns and needs.

The formal link from the UN organization to important human rights instruments is missing. The awareness of women's human rights is weakened by separating them from other areas of concern. Only few instruments exist that could revise the development that the strategy of gender mainstreaming actually weakens the stand of women's human rights in the operational work of the UN. The CEDAW Committee, for example, monitors the implementation of gender mainstreaming, at the same time as it is responsible for the implementation of women's human rights.²⁰⁷ This monitoring process, however, does only include State parties and not the United Nations entities and unities. It is important to be aware that the United Nations organization as such does not consider itself bound by international treaties, including anti-discrimination conventions such as CEDAW.²⁰⁸ Thus, the CEDAW Committee does not scrutinize and monitor the implementation of gender mainstreaming with regard to women's human rights within the UN.

²⁰⁷ Hannan, Director of the United Nations Division for the Advancement of Women, Gender mainstreaming: Some experience from the United Nations, presented at the conference: Gender mainstreaming – A way towards equality, by the Swiss Agency for Development and Cooperation, 20 June 2003, page 6, <http://www.un.org/womenwatch/osagi/statementsandpapers.htm> on 30 June 2003

²⁰⁸ Carey, Women, Peace and Security: The Politics of Implementing Gender Sensitivity Norms in Peacekeeping, page 61

As a means of raising awareness to human rights instruments granting women their right to participation and decision-making in the field of peace-building, the Namibia Plan of Action suggests that all mandates for peace support missions should refer to the provisions of CEDAW, as well as other legal instruments.²⁰⁹ The Security Council has additionally called on all actors which are involved in the implementation of peace agreements to adopt a gender perspective which ensures the protection of and respect for human rights of women and girls, cf. SC Resolution 1325 (2000), paragraph 8 litra c. It is essential for all actors working in peace operations to be aware of that the international standards adopted at the Beijing Conference on Women are placed under the Women's Convention. The Beijing Platform for Action states in its Global Framework, that the Platform "*upholds the Convention on the Elimination of All forms of Discrimination against Women*".²¹⁰

The strategy of gender mainstreaming in and after armed conflict, however, does not utilize human rights instruments as an argument for improving women's lives. Gender mainstreaming is introduced as a process where the analysis of women's and men's reality is of great significance. The equality between women and men is the end of the process and CEDAW's human rights for women are the final goal which the process shall lead to. Gender perspectives are considered to be a measure that shall lead to the observance with the human rights of women and girls. CEDAW's material provisions are not used as the means of achieving equality, but represent the end.

The United Nations are obliged to promote and encourage the observance of, and universal respect for, human rights by state actors, cf. the Charter Article 1 (3) and Article 55 litra c. Further, the organization is bound to act in compliance with the principle of non-discrimination and general rule on equality between women and men.²¹¹ The strategy of gender mainstreaming in peace operations has the goal that women's human rights are observed. Thus, this strategy is in compliance with their obligation to promote human rights. However, the approach of the UN to promote the

²⁰⁹ UN Doc. A/55/138 – S/2002/693, Namibia Plan of Action, para.2, 2.sentence

²¹⁰ UN Doc. A/CONF. 177/20, para.6

²¹¹ See further above chapter 3.6.

situation of women without utilizing the argument of women's human rights is questioned here.

5 Security Council, General Assembly and the strategy of gender mainstreaming

5.1 Introduction

In recent years, practice of the Security Council shows that the body has used its authority to stress the importance of human rights and humanitarian law. Human rights and humanitarian law have become a more integral part of the legislative and policy framework of the SC when dealing with issues of international peace and security.²¹² UN organs have expressed their concern for Afghan women's right to equality in a number of resolutions.²¹³ The raising awareness of the situation of women during and after armed conflicts has, inter alia, culminated in Security Council Resolution 1325 (2000) on Women, Peace and Security where the Council refers to women's human rights, in particular their right to political participation.²¹⁴

The General Assembly's function is to discuss and make recommendations on any question or matters within the scope of the UN Charter, cf. the Charter, Article 10. The Assembly has, in accordance with Article 10 and Article 11 (2), adopted annual resolutions on Afghanistan since 1988 with the extensive title "Emergency international assistance for peace, normalcy and reconstruction of war-stricken Afghanistan and the situation in Afghanistan and its implications for international peace and security". Since UNAMA has been established in March 2002, the Assembly has issued one resolution on that topic on 6 December 2002. To broaden the examination object, I have chosen to

²¹² Ramcharan, *The Security Council and the Protection of Human Rights*, page 1

²¹³ I choose to limit my discussion to the SC and the GA. The ECOSOC and CSW have provided several resolutions and recommendations, which deal with the question of women's human rights in general and in Afghanistan in particular. However, gender mainstreaming involves that women's concern are part of general considerations. CSW and ECOSOC are specialized charter bodies and therefore will explicitly deal with women's human rights. It is therefore of more interest to see whether women's rights are part of the general discussions in the Security Council and the General Assembly.

²¹⁴ UN Doc. S/RES/1325 (2000), para.8, *litra c*

include the resolution adopted in December 2001 during the armed attacks on the Taliban regime and after the signing of the Bonn Agreement.

Besides the Assembly's resolutions on the implication of the situation in Afghanistan on peace and security, the organ also adopts annual resolutions on the situation of human rights in Afghanistan.²¹⁵ These GA resolutions represent a good example of women's human rights being mainstreamed by a relevant organ of the UN into the human rights system. I will not go further into those resolutions as they specifically deal with human rights and thus are obligated to consider women's human rights, cf. the Beijing Platform for Action, paragraph 221.

In chapter four, under 4.4, I have discussed the relationship between the strategy of gender mainstreaming in peace operations and women's human rights. Gender mainstreaming does not mainstream the human rights of women in peace operation, but it mainstreams gender perspectives, talking about concerns, needs, sensitivity and not rights. In the following, I examine whether the detachment of women's human rights from the areas of peace and security as seen in the Beijing Platform for Action is also reflected in the SC and GA resolutions.

5.2 The UN's internal law

The Security Council and General Assembly resolutions, which will be discussed further below in this chapter, reflect the relationship between the strategy of gender mainstreaming and women's human rights. In addition, these documents send a signal to UNAMA about the weight different considerations shall have in relation to each other in the rebuilding of Afghanistan. The question then is if it is mandatory for other UN bodies, such as UNAMA, to comply with these SC and GA Resolutions.

Decisions by the United Nations organs can have the organization as such as its addressee. Security Council Resolution 1325 (2000) on Women, Peace and Security does not merely address itself to the UN member states, but also to the UN organization.

²¹⁵ These resolutions either have the title "Questions of human rights and fundamental freedoms in Afghanistan" or "The Situation of Human Rights in Afghanistan". They have been annually issued since 1985.

Paragraph 5, for example, states that the Council “*urges the Secretary-General to ensure that...field operations include a gender component*”. Decisions addressed to the UN organization, or parts of the organization, are binding for the UN bodies dealing with the respective area of concern because these bodies are the executive organs and thus can be instructed by the SC.²¹⁶ The strategy of gender mainstreaming is established through such decisions and UN bodies have thus the obligation to implement and apply the strategy.

Recommendations to Member states have in principle no binding effect to organs within the UN. Whenever a superior organ wishes to bind an inferior body, it must do so by means of instructions or decisions.²¹⁷ Yet, a recommendation of a superior organ, addressed to Member states, containing a declaratory or legislative element and providing that rules should be applied, represents a strong case for submitting that all inferior organs of the same organization must apply such rules.²¹⁸ The United Nations Office of Legal Affairs seems to consider subsidiary organs of the UN bound to UN resolutions and recommendations. In a note of 1973, the office stated:

*“It may be noted at the outset that the policies and restraints contained in the resolutions referred to below constitute directives with which those who act under the authority of the General Assembly, or of other principal organs of the United Nations, are bound to comply. For whether or not such resolutions are considered legally binding by States, United Nations organs are bound to apply such resolutions to their own actions, irrespective of the positions which may be taken by individual governments in the conduct of their own affairs.”*²¹⁹

Policy considerations support the view that rules and policies addressed to Member states by the primary organs of the UN, also should represent binding guidelines to subsidiary organs in the organization. Urging Member states to act in a certain way of

²¹⁶ Klein, Sands, Bowett’s Law of International Institutions, page 455

²¹⁷ Schermers, International Institutional Law, page 609

²¹⁸ Schermers, International Institutional Law, page 609

²¹⁹ United Nations Yearbook, 1973, page 145 and Schermers, International Institutional Law, page 609

conduct and in compliance with specific norms, binds the UN organization to meet the standards as well.

5.3 The Security Council

The resolutions that will be discussed in the following are six resolutions that are adopted after the fall of the Taliban regime in November 2001. They all deal with the peace-building in Afghanistan and the rebuilding of the country's public institutions. The resolutions are Resolution 1378 (2001), Resolution 1383 (2001), Resolution 1401 (2002), Resolution 1419 (2002), Resolution 1453 (2002) and Resolution 1471 (2003).

After the 11 September 2001 and the following armed conflict in Afghanistan, the Security Council adopts Resolution 1378 on 14 November 2001 committing itself in operational paragraph 1 to strongly support the establishment of a new and transitional administration leading to the formation of a government, presupposing that final responsibility for the establishment of a government lies with the Afghan people. The Council does not consider it to be the purpose of the United Nations to lead the government formation process itself. The support by the Security Council has to comprise, pursuant to UN Charter Article 1 (3) and 55 litra c, the promotion of the observance with human rights in general, and women's rights in particular.

Operational paragraph 1 is the most substantial provision about the political and social structure of the rebuild Afghanistan. It reads as follows, saying that the Security Council:

“Expresses its strong support for the efforts of the Afghan people to establish a new and transitional administration leading to the formation of a government, both of which:

- *should be broad-based, multi-ethnic and fully representative of all the Afghan people and committed to peace with Afghanistan's neighbors,*
- *should respect the human rights of all Afghan people, regardless of gender, ethnicity or religion,*

- *should respect Afghanistan's international obligations, including by cooperating fully in international efforts to combat terrorism and illicit drug trafficking within and from Afghanistan, and*
- *should facilitate the urgent delivery of humanitarian assistance and the orderly return of refugees and internally displaced persons, when the situation permits;"*

The Council expects the governmental bodies of Afghanistan to respect human rights, including those of women. The Council does not choose to use the phrase "to ensure human rights", but asks for the respect of human rights. By using the term "to ensure" the SC would express an obligation by the state to be active in matters of human rights also with respect to private actors and thus securing the de facto enjoyment of all human rights. Traditionally, the word "respect" is interpreted as an obligation to uphold a state of the law, including the retention to interfere with the individual's human rights.²²⁰ The obligation "to ensure", meaning an obligation to be active in relation to human rights, goes further than the traditional understanding of the obligation "to respect".²²¹ Women's right to political participation needs more than respect by state officials. Because of the systemic bars due to cultural and religious norms, the right needs to be actively ensured. According to CEDAW Article 7, Afghanistan has to ensure that the national legislation is in accordance with the Convention and is obligated to implement and enforce national legislation.²²²

The term "gender" is not mentioned in relation to a new constituted government. A "broad-based government" might include Afghan women, but it is the decision of the addressee who is part in a "broad-based" government. During the last two decades, women have not been considered to be part of the broad public in Afghanistan, which implies the danger that Afghans do not include women in the concept of government. The Council is made aware of its inaccuracy a month later, in Resolution 1383 (2001) as it notes that the Bonn Agreement objective is to establish, inter alia, a "gender-

²²⁰ Rehof, Trier, Menneskeret, page 71, see also chapter 3.2, page 56

²²¹ For further reading on state obligations see Eide, Economic, Social and Cultural Rights as Human Rights, page 22 - 28

²²² McClimans, Political Rights under the UN Women's Convention – The Case of Uganda, page 17

sensitive” government.²²³ This is a step forward, however, a gender-sensitive government does not necessarily imply the participation of women. It could also just comprise men which act sensitive to gender issues. Women’s human rights are not referred to as laid down in CEDAW and ICCPR. With explicit references to the Women’s Convention and other relevant legal instruments, the human rights of women would have been mainstreamed into peace-building in Afghanistan.

SC Resolution 1401 (2002) authorizes the establishment of the United Nations Assistance Mission in Afghanistan, cf. paragraph 1. The resolution reflects an important step in the UN engagement in Afghanistan, yet the document does not refer to human rights in general or women’s human rights in particular. The mandate of UNAMA refers to human rights. Human rights in the mandate of an UN peace operation is essential and diminishes the demand of references to human rights by the SC.²²⁴

A significant part of Resolution 1419 (2002) is that the advancement of Afghan women is explicitly mentioned and referred to in paragraph 7, stating that the Council:

"Urges also the Transitional Authority to build further on efforts of the Interim Administration to promote welfare and interests of Afghan women and children and to provide education to boys and girls."

The SC requires activity by the Transitional Authority. Yet, welfare and interest shall be promoted, not the human rights of women individuals. The SC does not utilize women’s human rights as an argument in respect of empowering and enhancing Afghan women’s situation.

Resolution 1453 (2002) of the Council refers for the first time to the pending democratic elections in 2004. The upside of the resolutions is that the Security Council uses the phrase *“to ensure...tolerance and respect for human rights”*. This is improving the status of human rights in the work of the United Nations in Afghanistan. UNAMA has to assist the Afghan authorities in actively to promote human rights. The downside,

²²³ UN Doc. S/RES/1383 (2001), the Preamble, para.6

²²⁴ See further below chapter 6.

however, is that the situation of women's right to participate in decision-making is not mentioned, even though the general elections in 2004 can facilitate the participation of women in public and political life. A combination in the resolution of the commitment to support the carrying-out of the elections and the right of women to participation would have sent a strong signal to all UN entities that women's political human rights matter. It is therefore regrettable that the Security Council misses this opportunity to put women's human right to political participation on the agenda.

The Security Council members unanimously adopt on 28 March 2003 Resolution 1471 extending the United Nations Assistance Mission in Afghanistan (UNAMA) for another 12 months. The Council is of the opinion that the United Nations must continue to play its central and impartial role in efforts to assist the Afghan people to consolidate peace and rebuild their country, cf. the Preamble paragraph 4. The mentioned impartiality of the United Nations can have an impact on the advancement of women in Afghanistan. When Afghan opponents of women's participation are arguing with cultural and social differences as well as referring to their right to self-determination, UNAMA might choose a low-key approach in relation to women's position in society. In operational paragraph 2, the Security Council endorses the Secretary-General's proposal to establish an electoral unit within UNAMA. Resolution 1471 plays a significant step in the UN assistance of the process to elections in Afghanistan, and by that has impact on the situation of Afghan women with regard to political participation.

Summarized, the Security Council has made one reference to women's human rights in resolution 1378 (2001), operational paragraph 1. Other than that it has committed the UN to support the promotion of respect for human rights and states the determination to assist the Afghan people in that area in all six resolutions. Substantive provisions on women's human rights in general and political participation in particular are lacking. It is, however, necessary to acknowledge that the Council's mandate is that of securing and maintaining international peace and security, cf. The Charter Article 24 (1). Besides, policy consideration of fairness and justice would demand that any group deprived of their human rights need to be taken into consideration in any resolution by the SC. To expect the UN Security Council to refer to women's human right to take part in the political life of Afghanistan in detail can be too utopian and unrealistic. Yet, one question comes up and remains at the same time unanswered. Would women's human

rights have been in the center of attention in SC resolutions on peace and security if the strategy of gender mainstreaming clearly would have stated women's human rights as the means of achieving gender equality?

5.4 The General Assembly

After the terrorists' attacks on 11 September 2001 and the armed attack on Al-Qaeda and Taliban by the allies' forces, as well as after the signing of the Bonn Agreement, the General Assembly adopted two of its annual resolution on Afghanistan. The first Resolution has the reference number 56/220 of 21 December 2001, and the second resolution is Resolution 57/113 of 6 December 2002. Both resolutions are divided into two parts, part A and part B. Part A deals with the situation in Afghanistan and its implications for international peace and security, while part B refers to the emergency international assistance for peace, normalcy and reconstruction of war-stricken Afghanistan.

Resolution 56/220 has several references to women's participation rights. In the Preamble of the first part, the Assembly strongly supports a new Afghan government fulfilling attributes like "...*broad-based, multi-ethnic, fully representative...*".²²⁵ That this includes women becomes visible in operational paragraph 9 of part A. The General Assembly

"stresses the importance of the full, equal and effective participation of women in civil, cultural, economic, political and social life and decision-making processes throughout the country at all levels, and calls upon all Afghan groups to protect and promote the equal rights of men and women, especially in the fields of education, work and health care."

The GA is far more explicit than the SC with regard to women's right to participate in decision-making processes. The recommendations by the Assembly are more progressive and outspoken. Part B of the resolution contains further provision related to women's human rights. In the Preamble, the international community expresses its deep concern that the majority of the Afghan people are still unable to enjoy their human

²²⁵ UN Doc. A/RES/56/220, the Preamble, part A, para. 7

rights fully, especially owed to the discrimination against or marginalization of parts of the population, in particular women and children. The Assembly urges and calls upon Afghan parties to promote and protect human rights, to cooperate fully with the United Nations without discrimination on grounds of gender, and condemns strongly the discrimination against women and girls.²²⁶

Subsequently it appeals to all Member States and the international community to ensure that all humanitarian assistance and future rehabilitation and reconstruction programs have to integrate a gender perspective. It asks states actively to attempt to promote the participation of both women and men, and women to benefit equally with men from those programs.²²⁷ Thus, the Assembly makes clear references to the United Nations gender mainstreaming which has the effect of backing up the policy of the organization and sends an important signal to Member States and United Nations entities and bodies. The human rights of women are described as violated rights in this resolution. The suggested solution to that violation is to apply the strategy of gender mainstreaming in all programs. Human rights as a means of improvement are not used in the argumentation of the GA. The human rights are represented as the goal, objective and end of gender mainstreaming.

The latest resolution is Resolution 57/113 of 6 December 2002. The Assembly mentions the goal of establishing a gender-sensitive Afghan government and the importance of the full and equal participation of women in political, economic, cultural and social life, cf. the Preamble of part A paragraph 7 and operational paragraph 5. Though welcoming the steps of improvement concerning the situation of human rights, the Assembly does not avoid stating its grave concern that there remain discriminatory practices that hinder the full enjoyment of women's human rights and fundamental freedoms.²²⁸ In part B in operational paragraph 12, 13, 14 and 16, women's human rights are referred to in connection with the denunciation of discrimination against women and girls and the importance of actively involving all elements of Afghan society, in particular women, in the development of relief, rehabilitation and reconstruction. In addition, the appeal

²²⁶ UN Doc. A/RES/56/220, part B, para.12, 13 and 14

²²⁷ UN Doc. A/RES/56/220, part B para.17

²²⁸ UN Doc. A/RES/57/113, part B, the Preamble

given the year before is reiterated, saying that the Transitional Authority and the international community shall mainstream gender issues into all humanitarian assistance and future rehabilitation and reconstruction programs. The parties shall actively attempt to promote the full and equal participation of women and men and that both genders equally benefit of those programs.²²⁹ Here again, human rights are described as violated, but are not seen as a productive argument for improving women's possibility to take part in Afghan public life. Rights granted through ICCPR and CEDAW are not included in the gender mainstreaming strategy.

5.5 Concluding remarks

Women's right to participation in Afghanistan's political and public life is not mentioned directly in any of the Security Council resolutions. Resolution 1378 (2001) is referring to a "broad-based government" not specifying who is encountered in this broad basis. Resolution 1401 (2002), dealing with the endorsement of UNAMA's mandate, does not mention women's rights at all. Then Resolution 1419 (2002) is urging the Afghan authorities to promote women's interests and welfare. A direct reference to women's situation is uplifting; however, women are presented as the passive part, receiving assistance. They are not referred to as the active part, taking part in decision-making processes which concern their lives. The latest resolutions do not mention the right of women to take part in decision-making at all, neither directly or more indirect. The attention to women's human rights is scattered and insignificant. Yet, how specific can a Security Council resolution be on women's right to political participation and decision-making? The Councils primary responsibility is to maintain international peace and security.²³⁰ Yet, these resolutions are all dealing with the political development of Afghanistan and the assistance with the development by the United Nations. The development of Afghanistan is a prerequisite for lasting peace and security in this region of the world. References to women's right to participate in the political development would have sent a strong signal to all involved in the rebuilding of the country. The strategy of gender mainstreaming, whether it is to mainstream the human rights of women or gender perspectives, is not specifically noticeable in any of the resolutions. Some references to women and the noting of a "gender-sensitive"

²²⁹ UN Doc. A/RES/57/113, part B, para.17

²³⁰ The Charter, Article 24, para.1

government witness scarce attention to the strategy by the SC. The Council does not achieve to comply with the duty to promote the human rights.

The General Assembly resolutions refer in a much larger extent to the right of women to participate in decision-making. The resolutions revolving around the impact of the situation in Afghanistan on international peace and security are more engaged in women's right to political participation than the SC resolutions dealing basically with the same subject. The Assembly is further stressing the policy of gender mainstreaming as means of achieving the observance with women's human rights.

The principle of self-determination is upheld in all resolutions adopted by the SC. Half of the resolutions are stating the right of self-determination of the Afghan people, and the latest resolution emphasizes on the impartiality of the United Nations in Afghanistan. All these characteristics indicate that the principle of self-determination precedes in attention the principle of equality between women and men. If necessary to use more pressure on the Transitional Authorities of Afghanistan to implement women's rights, how far would the United Nations go to interfere in the right to self-determination? The Security Council and the General Assembly signal that the right to self-determination is strongly accepted by the United Nations and that the role of UNAMA and other UN actors is to assist in, not lead, the peace-building. These are two factors that imply a low-key approach when conflict arises between international women's human rights and the rights of Afghan self-determination.

6 The United Nations Assistance Mission in Afghanistan

6.1 Introduction

This chapter deals with UNAMA's approach to advance the situation of Afghan women focusing on the right to participation established in CEDAW Article 7. The center of attention is the mission's performance with a view to gender mainstreaming and human rights.

The Bonn Agreement of 5 December 2001 outlines the role of the United Nations in Afghanistan during the peace-building period. It is the current legal and political framework for peace-building activities in Afghanistan. The Bonn Agreement is not a conventional peace agreement signed by belligerents. It has the characteristics of a statement where various Afghan factions agree on a process with the aim of institution-building and recovery on the principle of power-sharing.²³¹ The final goal is the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government, cf. the Preamble paragraph 7. The United Nations task is to assist and monitor the process described in the Bonn Agreement. Paragraph 6 of annex II states that the United Nations are responsible for the development and implementation of a program of human rights education to promote respect for and understanding of human rights. Additionally, the UN is agreed the right to investigate human rights violations and recommend corrective actions where necessary.

6.2 The mandate and its operating principles

The mandate of a peace operation mission constitutes the main entry point for bringing a gender perspective into the specific peace mission.²³² The Namibia Plan of Action paragraph 2 requires that Security Council resolutions setting up peace support operations incorporate a specific mandate on gender mainstreaming. In compliance with that, the Security Council Resolution 1325 (2000) paragraph 5 states that gender

²³¹ Harpviken, Knudsen and others, *Peacebuilding: Lessons for Afghanistan*, page 57

²³² Rehn, Sirleaf, *Women, War and Peace*, page 65

perspectives need to be incorporated into peacekeeping operations, and field operations need to include gender components. It is, thus, of importance that gender mainstreaming is part of an internal discussions by the UN from the very beginning when structure and programs of peace missions are designed.

The UN has been active and present in Afghanistan throughout the 90's. Gender issues, such as women's human rights, were a major component of the Strategic Framework developed by the UN and donors to guide assistance activities in Afghanistan in 1997-1998.²³³ This Strategic Framework had a principled approach founded on three UN human rights sources being CEDAW, the International Convention on the Rights of the Child (ICRC) and UDHR.²³⁴ The seven guiding principles made clear that aid would be subject to human rights conditionality and considerations of peace.

The planning of the post-crises UN mission in Afghanistan started in October 2001, lasting until March 2002. An Integrated Mission Task Force (IMTF), as recommended in the Brahimi-Report on UN Peace Operations undertook this process.²³⁵ The IMTF comprised several United Nations agencies as the first attempt of the UN to establish a fully integrated mission. The human rights of women were introduced to the planning of the United Nations Assistance Mission through the Strategic Framework of 1997-1998. Women's rights were part of the planning process of the UN mission from the very start.²³⁶ It is interesting to see whether women's human rights as stated in CEDAW have been made part of the final mandate and operating principles.

In Resolution 1401 (2002), the Security Council authorizes the establishment of the UNAMA, cf. operational paragraph 1 pointing to the report of the Secretary-General where the *mandate* and structure, as well as the *operating principles* of the mission are laid out.²³⁷ The mandate states that the SRSG has the overall coordinating role for all

²³³ Conflict Security & Development Group, King's College, London, Afghanistan Report, para.89

²³⁴ The Strategic Framework for Afghanistan, para.5

http://www.aims.org.pk/information_management_resources/strategic_framework.pdf, 14 August 2003

²³⁵ UN Doc. A/55/305 – S/2000/009, para.202

²³⁶ Conflict Security & Development Group, King's College, London, Afghanistan Report, para.89

²³⁷ UN Doc. A/56/875 - S/2002/278, Report of the Secretary-General containing the mandate and operating principles of UNAMA.

United Nations activities in Afghanistan. All the existing United Nations elements in Afghanistan are to be integrated into a single mission. According to paragraph 97 of the report of the Secretary-General, the mission's mandate includes:

“Should the Security Council authorize its establishment, the core of the mission's mandate would entail:

- (a) Fulfilling the tasks and responsibilities, including those related to human rights, the rule of law and gender issues, entrusted to the UN in the Bonn Agreement, which was endorsed by the Security Council in its resolution 1383 (2001);*
- (b) Promoting national reconciliation and rapprochement throughout the country, through the good offices role of my Special Representative;*
- (c) Managing all United Nations humanitarian relief, recovery and reconstruction activities in Afghanistan, under the overall authority of my Special Representative and in coordination with the Interim Authority and successor administrations of Afghanistan.”*

In the operating principles' paragraph 103, first sentence, laid down in the report by the Secretary-General, it is stated that:

“Human rights and gender issues will be central to the purposes and functions of the mission.”

Operating principle paragraph 98 *litra f* says that UNAMA's structure is based on a rights-based and gender-sensitive approach that should be integrated fully into the UN activities in Afghanistan. The mandate prescribes that important purposes and functions of the mission are human rights and gender issue. However, gender issues are separated from human rights and nothing indicates that gender issues imply that women's human rights need to be mainstreamed in any sector UNAMA and the UN agencies are working with. Gender issues could mean targeted interventions to advance women's situation, or it could mean gender mainstreaming in any sector without references made

to women's human rights. So far, the language is indistinct. The strategy of gender mainstreaming as well as women's human rights are not mentioned at all. The precision of the 1998 Strategic Framework with regard to women's human rights and the rights-based approach in any area of concern is lost. On the other hand, the mentioning of human rights and gender-issues in one provision of the mandate can indicate that mainstreaming human rights into UNAMA's activities is prerequisite and that gender issues are suppose to be a part of the mainstreaming approach.

The Office of the Special Representative of the Secretary-General is equipped with advisory expertise in gender equality, cf. operating principles paragraph 103. The Senior Gender Adviser provides the necessary guidance and direction to staff in the mission in order to insure a rights-based and gender-sensitive approach being applied in all aspects of the mission's work, cf. operating principles paragraph 103. Through the description of the Senior Gender Adviser's responsibilities, the mandate eventually links the human rights of women to the gender-sensitive approach. The Senior Gender Adviser has responsibility for the human rights of women. This can ensure that any programs and policies of UNAMA, that consider the situation of women and the impact of the program on women will be based on the human rights of women.²³⁸

UNAMA's original structure of two pillars, Pillar I dealing with political affairs and Pillar II dealing with relief, recovery and reconstruction,²³⁹ has been under review in 2003, and the respective pillars are now under a single head of office, the Field Coordination Support Unit, under the Office of the SRSG.²⁴⁰ Though the management level has changed, the mandate is still stipulating the responsibilities for the mission's staff. The Field Coordination Support Unit has to design an assistance program for Afghanistan in such a manner that ensures accountability against established standards of performance. Women's rights are mentioned as an example for an established standard which measures should be hold against, cf. operating principles paragraph 107

²³⁸ In none of the materials, such as press briefings, reports of the Secretary-General, briefings of the SRSG, are any references made to the concrete work of the Senior Gender Adviser. Generally, little account is given on any concrete working methods of UNAMA. The reports and briefings contain mainly accounts of the status quo and the development of Afghanistan.

²³⁹ UN Doc. A/56/875 - S/2002/278, para.104 – 108

²⁴⁰ UN.Doc. A/57/850 – S/2003/754, para.56

litra b. This provision places women's rights in the center of attention of the mission's work. The operating principles show the awareness of the UN to women's human rights, more than the actual mandate does.

According to the operating principle laid down in paragraph 98 litra b, UNAMA recognizes that the responsibility for the implementation of the Bonn Agreement ultimately rests with the Afghans themselves. UNAMA's aim is to bolster Afghan capacity, using as many Afghan staff as possible. This principle is given the term of "a light footprint".²⁴¹

Does the ownership and leadership by the Afghan authorities result in too little attention to women's human rights? The globalization of human rights as an apparent assault on state sovereignty has given hope to some international women activists that the rights situation of women will improve dramatically, particularly in post-conflict societies.²⁴² Granting the Afghan people the ownership and leadership, might imply that Afghan women are not included in the establishment of good governance in Afghanistan. An important result of the "light footprint" strategy is the emphasis on Afghan capacity building. This is expressed in the guiding principles for all UN activities and its assistance partners in Afghanistan laid down in the Immediate and Transitional Assistance Program for the Afghan People 2002 (ITAP).²⁴³ Reports of the Secretary-General to the Security Council and the General Assembly on Afghanistan contain references to the importance that Afghans have the leadership in peace building and that

²⁴¹ This principle seems to be in compliance with the emphasis on Afghanistan's sovereignty and right to self-determination by the Security Council and the General Assembly.

²⁴² Charlesworth, Wood, Women and Human Rights in the Rebuilding of East Timor, *Nordic Journal of International Law* 71, page 326; the authors are referring to international feminists, in particular Saskia Sassen and Zillah Eisenstein.

²⁴³ The Immediate and Transitional Assistance Program for the Afghan People has been prepared by the UN Country Team for Afghanistan, supported by their headquarters through a constituted Joint Working Group of members of the UN Development Group and the Executive Committee on Humanitarian Affairs, in consultation with members and standing invitees of the Inter-Agency Standing Committee. It draws on the outcome of a range of discussions and consultations among the international community, Afghan and international non-governmental organizations. The Guiding principles are on page 10, http://www.aims.org.pk/funding_updates/un_afg_21jan.pdf, 15 August 2003

capacity building is a fundamental task in reaching a larger number of Afghans involved.²⁴⁴

According to the guiding principles of ITAP, UNAMA has to emphasize the role of women and men by giving a voice to all and ensuring their involvement in identifying their priority needs. The advocacy for the human rights of women is part of the principles, as well as capacity building to promote the involvement and ownership by women. Additionally, the UN in Afghanistan must take the interests of women into account in all interventions and women must be central to all aspects of recovery. Gender analysis and gender mainstreaming are essential for all UN agencies. The rights-based approach to development includes a commitment to promote and protect the human rights of women. It is based on principles such as participation and non-discrimination.

With these Guiding principles in the background, the “light footprint” strategy can be of advantage for Afghan local women. Instead of having a large number of international staff shaping the administration, this strategy with increased recognition to the role of national professional staff in UNAMA offers an opportunity to not only build, and build on, national capacities, but also allows women to play a more active role in re-building their nation.²⁴⁵ Notwithstanding, the two principled approach equally espoused by the UN mission has potential contradiction embedded. On the one hand, the Afghans are to be in charge, on the other hand, international human rights norms shall apply. Any time the Afghan authority does not comply with international human rights norm, the contradiction can give rise to a conflict in UNAMA’s policy approach.

The operating principles, the established structure of UNAMA, the Guiding principles in ITAP prerequisite that women’s human rights are a central task of UNAMA when trying to integrate all UN agencies in Afghanistan, as well as assisting the Afghan

²⁴⁴ Reports of the Secretary-General: UN Doc. A/56/1000 – S/2002/737, 11 July 2002, para.59; UN Doc. A/57/410, para.90; UN Doc. A/57/487 – S/2002/1173, 21 October 2002, para.50, 53, 54; UN Doc. A/57/762 – S/2002/333, 18 March 2003, para.68 (b) and 72; UN Doc. A/57/850 – S/2003/754, 23 July 2003, para.59

²⁴⁵ Rehn, Sirleaf, Women, War and Peace, page 65

authorities and monitoring the Bonn process. The question is whether the operating principles and the guiding principles of ITAP are reflected in the day-to-day work of UNAMA. Despite the segregation of gender mainstreaming women's human rights and the mainstreaming of women's concern in peace operations, the guiding documents for UNAMA's work reflect a strong focus on the human rights-based approach giving hope for that women's human rights are mainstreamed in any policy or program of the UN in Afghanistan.

6.2.1 Institutional Mechanisms for the Promotion and Protection of Women's Rights

Part of implementing gender mainstreaming as a policy in all UN activities in Afghanistan is institutionalizing the strategy. On the initiative of UNAMA, the Inter-agency Network in Afghanistan was created between May and June 2002. The Network comprises UNAMA, 12 UN agencies, the Afghan Ministry of Women's Affairs (MOWA), selected donors and national and international NGOs. The goals of the Network are to provide an integrated approach to gender, effectively coordinate and monitor UN programs, addressing gender in general, and increase cost effectiveness while reducing overlap and duplication. This Network is, thus, the center of the institutionalization of gender mainstreaming.

In the core budget of UNAMA three gender positions are placed in the Office of the SRSG, two internationals and one national. One of the international staff is at senior level, while the national gender adviser is at the National Office level.²⁴⁶ The Senior Gender Adviser was appointed in May 2002, yet only on a temporary basis. The position is included in the senior management team. The gender advisers coordinate the mission-wide activities in the respective area, while the Senior Gender Adviser in the Office of the SRSG has the task to provide the necessary guidance and direction to staff of the mission to ensure that a rights-based and gender-sensitive approach is applied in all aspects of the mission's work.²⁴⁷ According to the peace operation report by the Conflict, Security and Development Group of King's College, UNAMA and its gender

²⁴⁶ UN Doc. A/C.5/56/25/Add.4, Report of the Secretary-General to the Fifth Committee, Program budget for the biennium 2002-2003, Estimates in respect of matters of which the Security Council is seized, UNAMA, page 39, annex III, table B and page 46, annex IV, organization chart of the OSRSG.

²⁴⁷ UN Doc. A/C.5/56/25/Add.4, para.17

advisers have, to date, followed a low-key approach when conflict arises between international norms of gender and human rights and Afghans' points of view. The low-key approach is characterized by dialogue and personal diplomacy. A shift in tactics can be seen from the period of the Taliban regime where the UN chose to follow a "principled stand" on women's rights.²⁴⁸ The background for this shift in tactics might be the result of learning that the confrontational position appeared to be counterproductive. Furthermore, Afghanistan is no longer object to international sanctions, but a state which is considered to require special care and protection, a so-called protégé state of the UN.²⁴⁹

With regard to Afghan women's possibility to participate in decision-making, capacity building is the principal approach by UNAMA. The mission has conducted an introduction course to the Emergency Loya Jirga and provided advice and assistance to the women delegates throughout the assembly in collaboration with MOWA.²⁵⁰ Based on this course, a national network of Afghan women delegates was found, which has last beyond the Emergency Loya Jirga.

The creation of the Women's Network has led to further engagement of UNAMA in collaboration with MOWA. In October 2002, the Secretary-General reported that a series of national and regional workshops are planned to help prepare selected Afghan women for engagement and participation in the first general elections in June 2004, some as prospective candidates for political posts and the majority as electors.²⁵¹ Planned are workshops that build the capacity of the Women's Network in

²⁴⁸ The Conflict Security and Development Group of King's College, London, refers to an expressed opinion by a senior official dealing with gender, Afghanistan Report, para.92

²⁴⁹ The Conflict Security and Development Group of King's College London, Afghanistan Report, para.92

²⁵⁰ UN. Doc. A/56/1000 – S/2002/737, 11 July 2002, Report of the Secretary-General to the General Assembly and the Security Council, para.37. The term "Loya Jirga" is usually translated as "Grand Assembly". It is the traditional method Afghans have used throughout history to solve their political crises. The word "Jirga", meaning a circle of people, is used in Afghanistan for various kinds of consultative gatherings. A Loya Jirga, or a Grand Assembly refers to a national gathering in which matters of national scale and importance are discussed and settled.

²⁵¹ UN Doc. A/57/487 – S/2002/1173, para.24

communication, negotiation/mediation, interviewing, networking and training of trainer skills. The women are then supposed to replicate the same network in their region and replicate capacity-building initiatives at the regional level to enhance women's political participation. UNAMA plans to provide support to the network in the preparation of a work plan for capacity building and public education in their regions.²⁵²

In Secretary-General's report of 23 July 2003, about nine months later, it is referred to that a number of meetings have been convened to ensure women's input and participation in the national election preparations. However, not UNAMA, but MOWA, The State Ministry, women's non-governmental organizations and activists are mentioned as the organizers of these meetings.²⁵³ So far, none of any reports indicates that the planned courses by UNAMA have been held yet.

A crucial part of implementing gender mainstreaming is to provide an adequate amount of resources in a budget to make certain that time and money for necessary analysis and program planning exist. The Inter-agency Network for Women developed a statement of goals and budget estimates regarding gender issues, the so-called "National Gender Budget" for inclusion in the Afghan National Development Budget that has been completed in October 2002.²⁵⁴ Furthermore, MOWA, assisted by UNAMA and UNIFEM, held a workshop of the Gender Program Working Group to develop gender programs in the National Development Budget and assess program gaps and subsequent financial requirements in the United Nations ITAP in 2003. The Afghan Transitional Authority has, however, omitted the Inter-agency's statement on goals and programs for gender issues from the National Development Budget. Instead, the Ministry of Finance decided to integrate some statements on gender mainstreaming under the heading of Public Administration in the budget.²⁵⁵ The contradiction of "light footprint" and the

²⁵² Report of UNAMA's Office of Communication and Public Information, "The United Nations in Afghanistan – 11 September 2001-11 September 2002", page 7, http://www.unama-afg.org/news/publications/sep_11-e.pdf, 25 August 2003

²⁵³ UN Doc. A/57/850 – S/2003/754, Report of the Secretary-General to the Security Council and the General Assembly, 23 July 2003, para.43

²⁵⁴ Conflict Security & Development Group, King's College, London, Afghanistan Report, para.90

²⁵⁵ Conflict Security & Development Group, King's College, London, Afghanistan Report, para.91

Afghan authorities being in charge, and the international effort to influence the authorities' actions with regard to international norms is evident.

Notwithstanding this omission by the Afghan authorities, reading and studying the National Development Budget as represented in October 2002, the chapter on Mainstreaming Gender through Public Administration reflects the international norm on gender mainstreaming. The objective is, inter alia, to ensure women's effective participation as equal partners in the social, political and economic life of Afghanistan. Ten expected results of the integration of gender into public administration are listed, as well as seven activities with several sub-activities are described which shall be prioritized under the program of gender mainstreaming. Among others, the strengthening of MOWA and the Office of the State Minister on Women are expected results, as well as increased participation of women in political roles and processes. With regard to women's political rights, activities are given importance that "*ensure[s] women's full participation in national/local elections and the census*".²⁵⁶ Though not having been able to achieve implementation of the National Gender Budget, the Transitional Administration is at least budgeting gender mainstreaming into their public administration.

In January 2003, the Afghan government established a Consultative Group framework, within which every National Budget is planned, financed and implemented. Twelve Consultative Groups, one for each of the National Development Programs, are convened by the chair Ministry (e.g. Ministry of Health and Nutrition Consultative Group), supported by a donor or donor/UN agency Focal Point.²⁵⁷ Other concerned ministries participate, as do the major donors, UN agencies, and representative NGOs.

²⁵⁶ The National Development Budget SY 1381-82, page 57, para.3 (iii), litra (d), <http://www.undp.org.af/docs/NDB%20Final%20-%20final.doc>, 26 August 2003

²⁵⁷ The 12 National Development Programs are: Refugees & IDP Return; Education & Vocational Training; Health & Nutrition; Livelihoods & Social Protection; Culture, Media & Sport; Transport; Energy, Mining & Telecommunications; Natural Resource Management; Urban Management; Trade & Investment; Public Administration & Economic Management; Justice; National Police & Law Enforcement; Afghan National Army; Mine Action.

In addition, Advisory Groups are established to ensure that crosscutting issues are mainstreamed effectively in the work of the 12 Consultative Groups and reflected in the policy framework and budget. These Advisory Groups are furthermore supposed to provide guidance to the ministries and put forward recommendations and reports. One of the five Advisory Groups is the Gender Advisory Group.²⁵⁸ Members are MOWA, which is chairing the group, the Civil Service Commission and Constitutional Commission, UNIFEM and the United States, UNAMA, UNDP, UNFPA and UNESCO.²⁵⁹ Furthermore, members are coming from donor countries or organizations, such as Canada, Denmark, Finland, Norway, Germany and the World Bank. The objective of the Gender Advisory Group is to promote the integration of gender equality and advancement of women into each national priority program area and to promote strategy and policy coherence on gender concerns.²⁶⁰ Another Advisory Group is the Advisory Groups on Human Rights. Its main tasks comprises the coordination of assistance to promotion of human rights, mainstreaming human rights into the Consultative Groups and other Advisory Groups and principle discussions on the current human rights situation.²⁶¹ The minutes of the Human Rights Advisory Group illustrate that UNAMA staff is taking part in discussion regarding women's rights in the process of the drafting of a new constitution and preparations for general elections in 2004.²⁶²

Looking at the website of the Gender Advisory Group and the Human Rights Advisory Group it is noticeable that so far only two minutes of the Gender Advisory Group have been published, while the Human Rights Advisory Group has made public eight minutes of their meetings and a large number of other working documents. The Gender

²⁵⁸ The five Advisory Groups are: Gender, Environment, Humanitarian Affairs, Human Rights and Monitoring and Evaluation, <http://www.afghanistangov.org/>, 8 October 2003

²⁵⁹ UNDP is the United Nations Development Fund. UNFPA stands for the United Nations Population Fund and UNESCO is the United Nations Educational, Scientific and Cultural Organization.

²⁶⁰ Framework for the Work of the Advisory Group on Gender, <http://www.afghanistangov.org/>, 8 October 2003

²⁶¹ Terms of References for the Advisory Group on Human Rights, <http://www.afghanistangov.org/>, 8 October 2003

²⁶² Minutes can be found on <http://www.afghanistangov.org/ag/hr.html> for the Human Rights Advisory Group, and on <http://www.afghanistangov.org/ag/gender.html> for the Gender Advisory Group

Advisory Group meeting on 7 May 2003 reflects the substantial work of the group.²⁶³ In this meeting, the group has been updated on the work of the Consultative Groups. These updates reflect technical information such as the number of women attending in the Constitutional Commission or applying the Afghan Police Force. Nothing about the discussions or point of views of the Gender Advisory Group are reflected in this minute. On the other hand, the minutes of the Human Rights Advisory Group give a comprehensive account of the subject that is chosen as a theme for the respective meeting. The meetings comprise each time another main subject discussed, such as human rights vis-à-vis the constitutional and electoral processes, incorporating rights and freedoms in the new constitution of Afghanistan or the human rights of children. In each of the above-mentioned topics, the human rights of women are discussed and substantial opinions and suggestions are made to improve the situation of women. Thus, the work of the Human Rights Advisory Group seems to be much more comprehensive and structured compared to the Gender Advisory Group. A possible reason is that human right standards facilitate a discussion of the situation of women and provides concrete suggestions for improvement by granting women their human rights.

Experiences so far have shown that the objectives of the Advisory Groups have been achieved only to a limited extent. Though various stakeholders meet and have specific discussions within their respective fields, the mainstreaming effect vis-à-vis the Consultative Groups process has been minimal.²⁶⁴ Instead of mainstreaming the issue of concern into the Consultative Groups, the five Advisory Groups have obtained a role on their own merits allowing the various stakeholders to meet and have specific discussions within their respective fields.²⁶⁵ A reason as to why this is the case is not given, but in the published minutes of the meeting of 7 May 2003, the Gender Advisory Group raises the concern about the very short notice of invitations to Consultative Group meeting.

²⁶³ The other meeting minute is of February 2003 dealing with the internal organization of the group.

²⁶⁴ This is stated in a Background note to a Workshop on the Consultative Group Process taken place on 27 August 2003, <http://www.afghanistangov.org/cg/workshop.html>, 8 October 2003

²⁶⁵ Background note to a Workshop on the Consultative Group Process taken place on 27 August 2003, <http://www.afghanistangov.org/cg/workshop.html>, 8 October 2003

6.3 The approach

What is UNAMA doing with regard to mainstream women's right to participate in Afghan peace building and how does it go about? This section 6.3 gives account of the practical work of UNAMA with regard to the adoption of the new constitution in winter 2003 and the upcoming general elections in 2004. In addition, the question of security has proved to be an important issue for women's right to political participation.

According to Security Council Resolution 1401 (2002) and Resolution 1471 (2003), the Secretary-General is requested to report to the Council every four months on whether the work of UNAMA is in consistence with the Council's resolutions. Complementary to that, the Secretary-General is requested in Security Council Resolution 1325 (2000) on Women, Peace and Security, to include in the reporting on peace operation missions the progress on gender mainstreaming and all other aspects relating to women and girls in peacekeeping missions. The reports by the Secretary-General provide a monitoring mechanism which makes it possible to hold the UNAMA management level accountable for their actions with regard to gender mainstreaming. I have used these reports as sources of information. The impression is that, after having read all five reports of the Secretary-General, no systematic way of addressing gender mainstreaming in the various topics raised can be found.²⁶⁶ At the same time, it does not seem as if the SC or the GA asks for information on the topic. Monitoring how gender mainstreaming implemented is not the center of attention. In addition to these reports, the SRSG or the Deputy-Secretary-General which heads the DPKO brief the Security Council on the situation in Afghanistan and UNAMA's work. Five briefings have been given so far and are used as sources of information as well. Little is found, however, on the subject of gender mainstreaming women's human rights in those briefings.

6.3.1 Security

The overall impression with the five reports delivered by the Secretary General on the work of the UN agencies and UNAMA in Afghanistan is that the question of security and the lack of such is the main concern of the peace-building process. The lack of

²⁶⁶ See also further below under chapter 6 about UNAMA. The five reports are: UN Doc. A/56/1000 – S/2002/737, 11 July 2002; UN Doc. A/57/410, 17 September 2002; UN Doc. A/57/487 – S/2002/1173; UN Doc. A/57/762 – S/2003/333, 18 March 2003; UN Doc. A/57/850 – S/2003/754, 23 July 2003.

security influences every area of peace-building in Afghanistan, and has great deterring effect on human rights, women rights in general and is a threat to women's right to participate in the elections in 2004 and to be heard in the Public Consultations which are held by the Constitutional Commission around the country. The security issue plays a vital role for the advancement of women, and Afghan women have articulated this point in a recent demonstration by around thousand women held in Kabul calling for efforts of improvement of security.²⁶⁷ One of the essential elements for an equitable gender-sensitive reconstruction process is that the human rights of women can only be taken fully account of by ensuring sufficient attention to the urgent need for improved security, including protection and assistance for those at risk.²⁶⁸

The impression one might get is that the security issue pushes the question of Afghan women's right to participate away from a central place of attention. It is, however, important to have in mind that women's possibility to take part in the public life of Afghanistan depends on a secure environment free from intimidations against them. A report by the Secretary-General to the Commission on the Status of Women (CSW), a sub-commission to ECOSOC, points out that women in Afghanistan cannot advance under the absence of security:

*"Women are reported to restrict their participation in public life to avoid being targets of violence by armed factions and elements seeking to enforce the repressive edicts of the previous Taliban regime."*²⁶⁹

²⁶⁷ BBC News on 9 August 2003, the demonstration was held in a women's park surrounded by walls in Kabul which can be used by women and children. The protest organizers had originally wanted to hold a march through the streets of Kabul. But in a country where such political gatherings by women are still very rare, they decided such a public display would be too risky.

http://news.bbc.co.uk/2/hi/south_asia/3138263.stm 10 August 2003

²⁶⁸ Gender and post-conflict reconstruction: lessons learned from Afghanistan, Joint workshop of the United Nations Inter-agency Network on Women and Gender Equality and the OECD-DAC Network on Gender Equality, OECD, Paris, 10-11 July 2003. Among the participants attended also the Afghan Minister of Women's Affairs, Habiba Sarabi. <http://www.oecd.org/dataoecd/51/62/14647765.pdf>, 22 October 2003

²⁶⁹ UN Doc. E/CN.6/2005/4, 23 January 2003, para.4

The security issue is the predominant prerequisite for Afghan women at date to be able to participate in decision-making. In order for the Afghan state to fulfill its obligation under the Women's Convention, it is essential that the Afghan authorities improve the security environment extensively.²⁷⁰ The international community and by that the United Nations organization as such, has committed itself in the Bonn Agreement to monitor and assist in the implementation of all aspects of the agreement.²⁷¹ One aspect, often referred to as the culmination of the Bonn process, is the general elections.²⁷² According to the Bonn Agreement, the United Nations together with the SRSG have to assist in the implementation of that provision, and are therefore obligated to assist in establishing a secure environment.

Gender mainstreaming implies that the situation and the human rights of women and men are under consideration in every sector of concern. It is therefore disappointing, that the impact, which absence of security does have for women, cannot be found in any chapter discussing security in four of five reports of the Secretary-General about UNAMA's work. The security environment's impact on women is solitary mentioned in a report to the specialized body on women's issues, CSW.²⁷³ One report to the Security Council and the General Assembly, submitted on 18 March 2003, points out the importance of the improvement of the security environment in connection with the promotion of the human rights situation in Afghanistan.²⁷⁴ However, women are here presented as victims with no legal resources. They are not perceived as active players in Afghan society with the right to participation.

As mentioned further above, the SRSG has regular briefings with the Security Council. With regard to security issues, UNAMA plays the role of a communicator informing the international community about the severe situation in Afghanistan and asking for more support to advance the situation. In none of the briefings, does the SRSG give account of any program with regard to security issues and its possible impact on women.

²⁷⁰ CEDAW, Article 2, litra c and e

²⁷¹ The Bonn Agreement, Annex II, para.2

²⁷² The Bonn Agreement, the Preamble, para.7

²⁷³ UN Doc. E/CN.6/2003/4

²⁷⁴ UN Doc. A/57/762 –S/2003/333, para.39

The latest development in the field of security in Afghanistan is the Security Council Resolution 1510 (2003) of 13 October 2003.²⁷⁵ The Security Council has authorized an expansion of the mandate of the International Security Assistance Force (ISAF) in areas outside of Kabul and its environs, so that UN civilians and of other international organizations can operate in a secure environment, cf. para.1. In addition, the authorization of ISAF is extended for another period of twelve months until fall 2004, cf. para.3. The United Nations tries, thus, to establish a secure environment for the further development and rebuilding of Afghanistan.

6.3.2 The Constitutional Process

A vital part in the rebuilding of political institutions in Afghanistan is the drafting and adoption of a new constitution. The constitutional process offers opportunities to establish principles of non-discrimination against women and equality between both sexes as laid down in CEDAW and ICCPR. Pursuant to the Bonn Agreement, part I, paragraph 6, the Transitional Afghan Government has established the Constitutional Commission (the Commission), which was inaugurated on 26 April 2003. The Commission consists of 35 members, whereof seven are women. The Constitutional Drafting Commission presented a preliminary draft of the constitution to the Constitutional Committee. The Bonn Agreement stipulates that a Constitutional Loya Jirga (CLJ) is convened to adopt the new Constitution.²⁷⁶ The convening of the Constitutional Loya Jirga is planned for December 2003.²⁷⁷

6.3.2.1 The final drafting of the new Constitution

As part of the process of drafting the final Constitution, the Commission has carried out public consultations in all 32 provinces of Afghanistan, preceded by a month of public awareness activities. With the technical support from UNAMA and the United Nations Development Fund, the Commission has established a secretariat, based in Kabul and eight regional offices throughout Afghanistan, as well as a site in Pakistan and in the Islamic Republic of Iran. In addition, the website of the Constitutional Commission allows Afghans to send in their opinion to a large number of specific questions all

²⁷⁵ UN Doc. S/RES/1510 (2003)

²⁷⁶ Bonn Agreement, part I, para.6

²⁷⁷ UN Doc. A/57/850 – S/2003/754, 23 July 2003, Report of the Secretary General on the situation in Afghanistan, para.11

referring to the new constitution.²⁷⁸ The work of the Constitutional Commission is to facilitate public awareness and nationwide consultation to ascertain the views and recommendations of as many Afghans as possible for then to finalize the Draft Constitution and to prepare for the selection process. With regard to public awareness and education on the constitutional process, over 15,000 lbs. of Public Education material, consisting of posters, leaflets, booklets and magazines, have been distributed to eight regional centers. Because of the high rate of illiteracy among the Afghan population, written information will not be sufficient to ensure adequate information to all Afghans, both women and men.

It is of great importance that Afghan women human rights activists are heard in the public consultation process. This safeguards that important principles of international human rights instruments with regard to non-discrimination on the grounds of sex and the aim of gender equality are part of the new constitution. Furthermore, Afghan women, whether activists or not, need to have access to consultations to exercise their right of participation in an important decision-making process.

The numbers of the SRSG say that more than 350 public consultation meetings were held with around 79 000 participants of whom 19 % were women. In addition, over 50.000 written submissions have been sent on to the Commission.²⁷⁹ According to the Constitutional Commission's information on its website, the public consultations were held in separate meetings with homogeneous groups, including community and tribal elders, women, members of the Emergency Loya Jirga, businesspersons, university professors, professionals, youth and Afghan members of NGOs and intergovernmental agencies.²⁸⁰ The consideration is that homogenous groups promote genuine consultations where possible manipulation by special interests groups is minimized. The human right to hold an opinion without interference is protected by such special measures, cf. ICCPR Article 19. The Commission hopes by that to achieve in-depth

²⁷⁸ The website of the Constitutional Commission on 22 August 2003: <http://www.constitution-afg.com>

²⁷⁹ Briefing by the SRSG to the Security Council on the situation in Afghanistan, 13 August 2003, para.22.

²⁸⁰ The Constitutional Commission's website on 22 August 2003: http://www.constitution-afg.com/public_consult.html

discussion and maximize participation. There has been no information to find, whether the consideration and hopes were fulfilled. On the one hand, the separation from men might have helped Afghan women to speak out openly about their expectations to the constitution. Yet, on the other hand, the question remains what happens to the opinions of women that are businesspersons, university professors and Afghan members of NGOs in those specialized groups. Women's input should be ensured into every group. The perspective of women in the area of business, academics and so on is missing in the respective group meetings consisting only of men.

Security conditions across Afghanistan have led to that public consultation meetings only have been held in the 32 provincial capitals.²⁸¹ Afghan women, not living in these provincial capitals, have fewer possibilities than men to travel for great distances in order to participate in public consultations. They are expected to stay in their homes to take care of the housework and children. CEDAW Article 16 litra c states that men and women shall have the same rights and responsibilities during marriage. In connection with Article 2 litra f and Article 5 on elimination and moderation of discriminatory practices and customs, this binds the Afghan state to change the practice of women alone bearing the responsibility for household work and children thus depriving them of equal share of public participation with men.

In case women want to take part in discussions, the role of the inferior part can involve that they are not taken seriously with regard to a political will. Thus, many women might not be allowed to travel together with male relatives to those meetings. The widespread violence against women, which they are very aware of, will furthermore reduce the number of women deciding to travel the distance to the provincial capital. Rural women's opinion has probably not been heard to the extent it is necessary to improve women's situation in Afghanistan. Thus, the human right to political participation is breached. The international community does not provide the required security in order to ascertain these women's access to the meetings.

²⁸¹ UN Doc. A/57/850 – S/2003/754, 23 July 2003, Report of the Secretary-General on the situation in Afghanistan, para.12

Another form of taking part in the consultation phase is to hand in written submissions to the Commissioners or to their regional officers. Two-third of the Afghan adult population is illiterate. It is unlikely that women have the opportunity to submit their opinion about the new constitution in a written form. The preceding month of public awareness activities cannot be, in addition, sufficient enough to explain the process of the draft of the constitution, what the constitution will mean to the individual and her/his life, much less offer adequate education and information on different constitutional provisions and national structures which can be chosen among. Women meet several obstacles when trying to participate in the decision-making of the new Constitution.

Despite these severe obstacles, there have, however, been attempts to make women voices heard in the drafting process of the new constitutions. Women's organizations and networks have been actively involved in the drafting process. In December 2002, two women members of the Constitutional Drafting Commission met with representatives of 15 UN agencies, organizations and donors to discuss procedural and legal concerns pertaining to the protection and promotion of women's rights.²⁸² Another example is the Afghan Women's Network (AWN) engagement that arranged a meeting with the Constitutional Commission in July 2003.²⁸³ In this workshop, more than 500 Afghan women were invited from different parts of Kabul, submitting their opinions by answering to 36 questionnaires. Most of these women were members of AWN, others working with AWN's member organizations.

6.3.2.2 Delegates to the Constitutional Loya Jirga

According to the SRSG, the preparations for the Constitutional Loya Jirga have started with the selection of the delegates.²⁸⁴ The total number of delegates will be 500.²⁸⁵ The participation of women in the CLJ is based on both secret ballot, and direct

²⁸² UN Doc. A/57/762 – S/2003/333, Report of the Secretary-General to the General Assembly and the Security Council, 18 March 2003, para.46

²⁸³ The Afghan Women's Network is an umbrella organization to several Afghan women's non-governmental organizations, see also <http://www.afghanwomensnetwork.org/index.html>, 25 August 2003

²⁸⁴ Briefing by the SRSG to the Security Council on the situation in Afghanistan, 13 August 2003, para.23

²⁸⁵ The Emergency Loya Jirga consisted of 1501 participants, whereof 180 were women participants. That is a percentage of 12 % of women.

appointment. The first step is that district delegates, who were chosen by traditionally local councils (called *shura*) already for the Emergency Loya Jirga, gather again to choose 344 Loya Jirga delegates among themselves to the Constitutional Loya Jirga.²⁸⁶ During the elections of participants to the Emergency Loya Jirga, it was apparent that some women were elected as district delegates. The total number of elected women as representatives to the Emergency Loya Jirga was twenty.²⁸⁷ It is promising, that women will be among the 344 elected members of the CLJ as they are selected among the same district delegates of the Emergency Loya Jirga. A lower number of elected women is however likely, since this time the figure of the elected participants is 344 and not 1051 as it was to the Emergency Loya Jirga, and thus less seats are available for women to be elected to. Despite the rather low figure of elected women to the Emergency Loya Jirga, the number of 20 elected women is a progress. Especially, since at former Loya Jirgas in Afghanistan women almost never attended as delegates caused by elections through male-dominated traditional councils (called *shura*).

The countrywide registration of the district delegates who will elect delegates to the CLJ officially began on 28 September 2003.²⁸⁸ With regard to the number of women registered, the information of the UNAMA Office of Communication and Public Information relates only to one district. In the district Takhar in the northeast 30 women were registered as district delegates out of 576.²⁸⁹ Whether the other districts have not send any women to be registered as district delegates or whether the numbers of registered women simply are not submitted to the press by random, is not possible to know. The appropriate supporting documentation for their registration ranges from simple to elaborate letters along with fingerprints and verification signatures by many villagers.²⁹⁰ The registration process has progressed without reports of insecurity or

²⁸⁶ The Emergency Loya Jirga was convened to vote on the Transitional Authority, including a broad-based Transitional Administration, to lead Afghanistan until a fully representative government can be elected through genuine elections in 2004, cf. Bonn Agreement, Part I, para.4. The Emergency Loya Jirga took place 21 – 22 June 2002.

²⁸⁷ The remaining 160 women delegates were appointed to especially reserved seats by institutions and interested groups.

²⁸⁸ UNAMA press briefing, 2 October 2003, <http://www.unama-afg.org/news/index.html>

²⁸⁹ UNAMA press briefing, 2 October 2003, <http://www.unama-afg.org/news/index.html>

²⁹⁰ UNAMA press briefing, 5 October 2003, <http://www.unama-afg.org/news/index.html>

intimidation.²⁹¹ The registration of district representatives who will elect delegates to the CLJ has been completed in all but three provinces by the 2 November 2003. The remaining provinces are Kabul, Kandahar and Paktika where the registrations are not completed or have not yet started.²⁹² Those registered will now proceed in November to the regional elections, which will choose regional delegates for the Constitutional Loya Jirga convention stated for 10 December 2003.²⁹³

The remaining delegates of the CLJ are selected, or appointed to, their seats. The selection process has the requirement of a minimum amount of selected women candidates. Selected constituencies will choose 106 delegates to the CLJ, Of the 106 special category seats, 64 will be filled through women's special category elections. Of the remaining 42 special category seats 24 will be filled by refugees, 9 by Kuchis, 6 by internally displaced persons and 3 by Hindus and Sikhs.²⁹⁴ Appointed delegates fill the

²⁹¹ UNAMA press briefing, 5 October 2003, <http://www.unama-afg.org/news/index.html>

²⁹² UNAMA press briefing, 2 November 2003, <http://www.unama-afg.org/news/index.html>

²⁹³ In the city of Faizabad, Badakhshan's provincial capital, the first elections to elect delegates for the Constitutional Loya Jirga was held on 16 and 17 October. The election was held earlier than the other scheduled elections in the rest of the country due to the particular remoteness of towns and villages in some of Badakhshan's districts. The remoteness becomes even more acute in winter where weather conditions will make travel from certain areas to Faizabad impossible. A total of 13 delegates were elected. The number of women elected as delegates to the CLJ is not presented. However, four women were candidates nominated to be CLJ delegates. The elections for delegates for the CLJ in the rest of the country will take place in the end of November and early December. UNAMA press briefing, 12 October, <http://www.unama-afg.org/news/index.html>

²⁹⁴ Press Release by the Constitutional Commission Secretariat, 1 November 2003,

<http://www.constitution-afg.com/resrouces/CLJ%20Special%20Election%20Update%201%20November%202003.doc>

Women's elections: Women's elections recently were completed in Gardez, Kunduz and Balhk provinces. Gardez: On 30 October, fifty-four women participated and four candidates ran for the two CLJ delegate seats. The elected delegates are: 1. Sameen, a teacher from Chamkan (21 votes) 2. Halima Hazan, the director of the Ministry of Women's affairs (20 votes). Kunduz: Elections were held at the Women's High School Fatma Zarah on 30 October. One hundred and seventy-five women registered and participated in the elections. Participants came from three of the seven Kunduz districts (Kunduz, Imamsaib and Khanabad). Eight women stood as candidates and two CLJ delegates were elected: 1. Nafisa Sadiqi, a teacher at Lycee Khatijatel Kobra Women's school 2. Musluma, a former teacher and current member of the Volunteer Women's Organization. Baghlan: Two hundred and sixteen women participated in the election. Seven women stood as candidates and two were elected: 1. Rahima d/o

final 50 seats. Twenty-five of those fifty will be women, while the remaining 25 will be appointed from amongst legal scholars and specialists to constitutional law. The President, Hamid Karzai, will appoint these 50 delegates.²⁹⁵

The design of the selection process for the CLJ tries to take into account the need to ensure women's participation. According to the Secretary-General, the Constitutional Commission has met with the MOWA and women leaders, including delegates to the Emergency Loya Jirga, to assess women's needs and concerns in the process. Additionally, women delegates to the Emergency Loya Jirga have established a *shura* to advance women's concerns in the political and reconstruction processes.²⁹⁶ Experiences from the Emergency Loya Jirga in June 2002 show that the main threat to women's participation in the Constitutional Loya Jirga will probably be the threat of violence against themselves and their families.²⁹⁷ It is the obligation of UNAMA and ISAF with the international community assistance to ensure the safety of women participating and that they can speak out about their views at the CLJ without the fear of intimidations and in a safe environment.

6.3.3 Elections

A comprehensive report of the Secretary-General on Women, Peace and Security, submitted subsequent to the request of the Security Council in resolution 1325 (2000), is providing an account of the situation of women in the area of armed conflict and

Mohammad Juma, Vice-Chairman of the Baghlan Women's Organization (67 votes). 2. Najeya Aimaq who hold a Bachelors Degree in Literature (54 votes). **Balhk:** One hundred ninety-nine women registered and voted. Dr Nadira Hayat Burhani and Maria Sazawar were elected from a pool of ten candidates.

Hindu and Sikh elections: On 1 November, over 200 people, including over 80 women, participated in the first phase of Hindu Sikh elections. Thirteen candidates, including one women, emerged for the 12 electoral seats. The 12 electors were elected through secret ballot elections. First phase elections for Hindus/Sikhs have been completed in Kandahar and Ghazni and will be completed in Khost and Jalalabad in the coming weeks. Electors selected in first phase elections will assemble on 15 November to elect the three Hindu and Sikh CLJ delegates.

²⁹⁵ UNAMA press briefing, 12 October, <http://www.unama-afg.org/news/index.html>

²⁹⁶ UN Doc. A/57/850 – S/2003/754, Report of the Secretary-General to the General Assembly and the Security Council, 23 July 2003, para.44

²⁹⁷ Human Rights Watch, World Report 2003, Afghanistan, <http://hrw.org/wr2k3/asia1.html#defending>, 25 August 2003

peace and security.²⁹⁸ According to the report, a central part of reconstructions is the creation of an electoral system that guarantees free and fair elections, and allows for universal suffrage, cf. paragraph 347. One measure to increase women's political participation is the introduction of quota for women candidates in local and national elections. Such quotas can be voluntary targets established by political parties or legislated percentages in local councils and parliament. However, in order to be sustainable, those measures need to be coupled with training for women candidates and women in public office, public awareness rising campaigns and changes within political parties, cf. paragraph 348. Later in the report on reconstruction, in paragraph 388, the Secretariat states that gender perspectives in the sector of governance need to be given more careful thought, compared to other subjects. It is necessary to identify and adequately address all relevant gender perspectives in this area of concern.

Women's right to participate in decision-making involves the right to vote and to be eligible, cf. CEDAW Article 7 litra a and ICCPR Article 25. This has to be in accordance with the non-discrimination principle in Article 1 of the Women's Convention and the ICCPR Article 2 and 3. The exercise of this right can soon be a reality for Afghan women as the Afghan Transitional Administration and its Interim Afghan Electoral Commission, consisting of six Afghans, two of whom are women, are preparing for the general elections in June 2004 with the comprehensive support of UNAMA's Electoral Unit. The Afghan Electoral Commission and the UNAMA Electoral Unit have formed the Joint Election Management Body to work closely together. The goal of the Management Body is to prepare an electoral process that is transparent, nationwide, where everybody can participate, and which should not be secrete or hidden.²⁹⁹ The intergovernmental and specialized mandates on gender mainstreaming require that the Electoral Unit and the Management Body design policies and programs with the full participation of women. Another requirement is that those programs will foster the empowerment and advancement of women. Thus, the preparation of the elections in June 2004 has to be developed with the participation of

²⁹⁸ UN Doc. S/2002/1154

²⁹⁹ Press Briefing on the occasion of the Official Signing of the Voter Registration Project, page 4, 14 August 2003, http://www.unama-afg.org/news/briefing/spokesman/2003/03aug14_reg.htm, 18 August 2003

Afghan women.³⁰⁰ A Mission Assessment Team from the UN Electoral Assistance Division is in October/November 2003 for six week in Afghanistan to assess the preparations for voter registration in Afghanistan. The preparations for the voter registration are examined which is due to begin in eight cities across the country on 1 December 2003.³⁰¹

Preparations for the national voter registration program have started. In August 2003 at a press briefing on the Official Signing of the Voter Registration Project, the Chief Electoral Officer of UNAMA, Reg Austin, explained that the ground for the registration plan has been prepared by the Electoral Unit and will be reflected in decrees which the Afghan President Karzai will pass in the near future. Among several important issues in the registration plan, UNAMA's Electoral Unit has worked on how it is feasible effectively to ensure the registration "*in a very historical context of Afghan women as citizens in the election process*".³⁰² Unfortunately, the historical context, which it is referred to here, is not further explained. Women are, however, seen as citizens. Citizenship is a prerequisite in order to be registered as a voter. Many Islamic states have different rules on citizenship applying for men and women, discriminating women by linking her citizenship to the nationality of her husband.³⁰³ According to CEDAW, Article 9, the Afghan state has to grant women the right to acquire, change or retain their nationality regardless of their marital status. In order to observe with the international human rights of women, UNAMA's registration plan has to reflect the utmost attempt to assure that women with Afghan nationality are registered as a voter. The same applies for the Afghan authorities who will decide the criteria to define a qualified voter in the Afghan Electoral Law. The legislation has yet to be formally

³⁰⁰ UN Doc. A/Conf. 177/20, Beijing Declaration, para.19, Beijing Platform for Action, para.142 (a), para.189, UN Doc. A/55/138 – S/2002/693, Namibia Plan of Action, para.1

³⁰¹ UNAMA press briefing, 5 October 2003, <http://www.unama-afg.org/news/index.html>. The eight cities are: Bamyan, Jalalabad, Kabul, Kunduz, Mazar-e-Sharif, Herat, Kandahar and Gardez.

³⁰² Press Briefing on the occasion of the Official Signing of the Voter Registration Project, page 4, 14 August 2003, http://www.unama-afg.org/news/briefing/spokesman/2003/03aug14_reg.htm, 18 August 2003

³⁰³ See further above chapter 3.3. See also Graff, Irene, Invisible Women-Invisible Rights, page 106

considered by the Transitional Administration.³⁰⁴ However, as mentioned above, the Electoral Law has to comply with the provisions of the Women's Convention.

A vital measurement to get women to register themselves is an effective communication with the Afghan population to explain the process. A Civic Education Program is about to start in Afghanistan. A large Afghan staff needs to be recruited and UNAMA is planning capacity building for the staff training them both for civic education and subsequently for registration. In a briefing of the SRS to the Security Council on 6 May 2003, Lakhdar Brahimi talks about the requirement of 3000 women and men.³⁰⁵ This demonstrates that Afghan women are involved in the rebuilding process of their governance institutions and that the Civic Education Program considers that women are addressees of education on equal terms with men. As a chance of ensuring the observance with women's human right to participate in the electoral process, from registration to the final elections and the necessary information and capacity building of Afghan women, the Afghan Independent Human Rights Commission (AIHRC) is taking part in the civic education program.³⁰⁶ The AIHRC has established a women's unit to ensure that women's rights are addressed.

An example of civic education is the workshops on human rights and civic education in the electoral process in the district of Bamyan. The two workshops lasted for three days. The first workshop, entitled "Freedom of Expression and the Role of the Provincial Human Rights Offices", targeted members of the Afghan Independent Human Rights Commission and staff of the provincial government departments. Members of the

³⁰⁴ Mr. Reg Austin, referred to in the newspaper Afghan Update, "Planning Starts for the Registration of Afghan Voters", June 2003.

³⁰⁵ Meeting of the Security Council, Briefing by SRS to the SC and GA on Afghanistan, 6 May 2003, page 2, <http://ods-dds-ny.un.org/doc/UNDOC/PRO/N03/346/57/PDF/N0334657.pdf?OpenElement>, 13 August 2003

³⁰⁶ The Afghan Independent Human Rights Commission is established pursuant to the Bonn Agreement, part III, litra C, para.6. It has been established by decree on 6 June 2006. The key capacities of the Commission are: the development of a national program of human rights education; approaches to human rights monitoring, investigation and remedial action, the advancement of the women's rights; and a national process of consultation on transitional justice. The program is entirely implemented by the AIHRC itself, with the assistance of a joint UNAMA–Office of the United Nations High Commissioner for Human Rights–Commission support project.

AIHRC conducted the workshop themselves. The second workshop, entitled “Police in the Provinces: Human Rights and Civic Education for the Electoral Process”, is aimed at police officers and is held at the Provincial Police Headquarters. Such workshops will also be held in Mazar, Kandahar, Jalalabad and Gardez, aimed at supporting State structures in the provinces.³⁰⁷

Linked to the question of security and the behavior of police officers during the voter registration process, one hundred and forty police officers have begun a one-month training course run by UNAMA’s Electoral Component to prepare them for their role of providing security to the voter registration teams. The police officers will learn about the electoral process, particularly voter registration, before moving onto security issues. The training is part of the Registration Security Project that will see 1,220 police officers trained.³⁰⁸

According to the Secretary-General, UNAMA plans to assure culturally appropriate modalities for women’s registration in the registration process, using women registrars and separate registration facilities.³⁰⁹ This physical separation of women from men with the aim to ascertain their registration is necessary to ensure women de facto access to the right to vote and stand for election in many Muslim countries.³¹⁰ Sharing registration facilities with men will in many areas of Afghanistan involve that women cannot register themselves as voters due to the tradition of *purdah* and the probable intimidation women will fear disregarding this tradition.³¹¹ Differential treatment in order to achieve de facto equality is in accordance with the non-discrimination principle and is accepted both by the HRC and by the CEDAW Committee.³¹² By taking into consideration the actual situation women are living in and adapting the registration program to that situation, UNAMA and the Electoral Unit, as well as the Joint

³⁰⁷ UNAMA press briefing, 25 September 2003, <http://www.unama-afg.org/news/index.html>

³⁰⁸ UNAMA press briefing, 30 October 2003, <http://www.unama-afg.org/news/index.html>

³⁰⁹ UN Doc. A/57/850 – S/2003/754, 23 July 2003, Report of the Secretary-General on the situation in Afghanistan, para.14

³¹⁰ Graff, *Invisible Women-Invisible Rights*, page 124

³¹¹ See further above chapter 2.2

³¹² See further above chapter 3.2

Management Board, do apply gender perspectives as required in the gender mainstreaming strategy.

6.4 Recommendations

When talking about the planned elections in June 2004, one has to have in mind that the Afghan administration with support from different UN agencies, still is in the beginning of the process. In October 2003, no legislation on political parties and media access is put in place. This legislation is a prerequisite for credible conditions for a fully representative government chosen by the people of Afghanistan. Additionally, the electoral system must be agreed upon and legislated for and steps must be taken to ensure a secure environment for political activity.³¹³ UNAMA's role with regard to legislation on political parties and the electoral system is to assist and monitor so that a fully representative and gender-sensitive government will be established with help of the elections.

The legislation on political parties has to be in observance with Afghanistan's obligation under CEDAW, not being discriminatory against women and using appropriate measures, such as financial incentives, to appoint women to political seats within the political parties.³¹⁴ Furthermore, in order to promote the women's right to participate in public decision-making, UNAMA has to assist in the assessment of a possibility to legislate temporary special measures such as quotas to ensure women the opportunity to be eligible at the general election 2004.³¹⁵

The type of electoral system chosen can affect women's opportunity to participate in the elections as political candidates.³¹⁶ Geographically smaller constituencies might be of advantage for women to participate successfully in elections. In Afghanistan, where women in many areas do not have the possibility to move freely around alone, mainly because of their fear of violence and sexual abuse, a woman candidate can gain more acceptances for her campaign from her smaller community and be less exposed to

³¹³ Briefing by SRSB to the Security Council on the Situation in Afghanistan, 13 August 2003, page 4 and 5

³¹⁴ CEDAW Article 1 – 3

³¹⁵ CEDAW Article 4 (1)

³¹⁶ Graff, *Invisible Women-Invisible Rights*, page 95

violence.³¹⁷ In addition, she can easier work as candidate close to her home considering the house chore, and will have much lower expenses than having to travel great distances to meet the voters.³¹⁸ On the other hand, it is easier for a smaller constituency to have control and influence over its candidate. Women will be more controlled in smaller communities and have less chance to free them from this control running for a public office. A larger constituency can provide independence from the community's stranglehold. Whether Afghanistan chooses to follow a proportional representation system or the single member constituency system, the importance is that before deciding on one of the systems, the different outcomes and impacts these systems have on women, have to be analyzed with the support of UNAMA.³¹⁹

The right to freedom of movement for women obviously has to be in place for the elections in Afghanistan in order to ensure women's participation, but the formal existence of the right is not sufficient.³²⁰ For example, legislation by the Afghan Transitional Administration on the size of constituencies has to be accommodated to the reality Afghan women live in. Additionally, security has to be in place to realize the freedom of movement.

The elections planned for June 2004 are supposed to fulfill the demands of "genuine" elections as required in UDHR Article 21 paragraph 3 and ICCPR Article 25 litra b. Genuine elections are often used interchangeable with free and fair elections.³²¹ Free elections are, inter alia, meant to protect voters and candidates and are closely associated with the freedoms of expression, association and assembly. Women in

³¹⁷ According to Human Rights Watch, in addition to the terrible physical and psychological harm caused by attacks, violence also serves to limit the participation of women in civil society and the public sphere. Sexual violence curtails their rights to education, to work, to privacy, and to health care. Many women and girls are essentially prisoners in their own homes. Report by Human Rights Watch, July 2003, "Killing you is a very easy thing for us", page 14, 55 and 73, <http://www.hrw.org/reports/2003/afghanistan0703/afghanistan0703.pdf>.

³¹⁸ Graff, Invisible Women-Invisible Rights, page 95

³¹⁹ Graff, Invisible Women-Invisible Rights, page 94, and Norris, Increasing Women's Representation in Government: What strategies would work best for Afghanistan?, page 2

³²⁰ UDHR Article 13 (1), ICCPR Article 12 (1)

³²¹ Graff, Invisible Women-Invisible Rights, page 92

Afghanistan are, however, considered to be subordinated and inferior to men. In such an environment, it is crucial that women are provided excellent education and information about the political choices they make. Men, on the other hand, need to receive education and information in order to change stereotypical gender roles, otherwise, many Afghan women will not be able to exercise their right to free elections being denied the possibility to freely form their opinion about a candidate.³²² The Civic Education Program and the education carried out by AIHRC need to have considerable information to both women and men on what is meant by free elections and which rights women have.

When referring to fair elections, the principle comprises a level playing field for all election participants. The violence against political women activists in Afghanistan shows that interference is an actual threat to the principle of fair elections. In addition, this kind of interference will almost certainly also take place under the registration, which needs to be free and fair in order to ensure genuine elections. An effective measure, besides increasing the military appearance in Afghanistan, is public education and information campaigns to eradicate the behavior of men denying women public participation. By providing the Civic Education Program to the Afghan People, UNAMA and Afghan authorities attempt to observe their obligations under CEDAW.³²³

³²² Graff, *Invisible Women-Invisible Rights*, page 115, 116

³²³ Graff, *Invisible Women-Invisible Rights* page 121, 122

7 Final remarks

The fruits of gender mainstreaming in UNAMA can be seen in the operating and guiding principles, in the focus on capacity building of Afghan women as well as men through education and information programs, and the appointment of three gender advisers, one on the management level, as well as the establishment of the Inter-agency Network. The required regular monitoring, reporting and evaluation of the progress made and obstacles encountered is, however, not noticeable. Gender mainstreaming activities are barely visible in any of the reports of the Secretary-General or the briefings by the SRSG. The impression I have is that procedures are not in place to deal with the requirements of the gender mainstreaming strategy and that the main focus of UNAMA is to dedicate experts within the mission to focus exclusively on gender, such as the Senior Gender Adviser and the Inter-agency Network. Further, a system for holding the mission accountable to achieving its goals is not in place. Much of information on women's role in the election and constitution process is discovered through the reports and briefings. The role UNAMA is playing in the processes with regard to mainstream Afghan women's rights is less easy to find out. It is a hope and guessing that the mission is assisting the Afghan government strongly and by that tries to influence the authorities to take women's rights into consideration.

Throughout the process of working on this thesis, I have searched for the recognition that women's human rights represent the approach to enhance Afghan women's position in society. It can be found at the field operation level. The operating principles of UNAMA in general, as well as in the operational principle for the Senior Gender Adviser in particular, refer to a rights-based approach with regard to gender issues, and so do the guiding principles in ITAP. According to this approach, the obligation of UNAMA in the constitution and election process is to argue for women's rights based on women's international human rights. This argumentation transfers so much more power to women than to argue based on women's needs and concerns. It places

substantial duties and obligations on Afghanistan, and the human rights-based discourse requires the United Nations to stay actively seized in that matter, cf. the UN Charter Article 1 (3) and Article 55 litra c. The final recommendation then must be that any assistance and activities of the UN in general, and the peace-building work in particular, move towards an integrated framework bringing gender mainstreaming and human rights together. This should happen in manner that is noticeable for all involved, UN agencies and entities, host states and local women.

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Abbreviations

AIHRC	Afghan Independent Human Rights Commission
AWN	Afghan Women's Network
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHR	Commission on Human Rights
CLJ	Constitutional Loya Jirga
CSW	Commission on the Status of Women
DPKO	Department of Peacekeeping Operations
ECOSOC	Economic and Social Council
GA	General Assembly
GAD	Gender and Development
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICJ	International Court of Justice
ICRC	International Convention on the Rights of the Child
IMTF	Integrated Mission Task Force
ITAP	Immediate and Transitional Assistance Programme for Afghan People
MOWA	Afghan Ministry of Women's Affairs
NGO	Non-governmental organization
OSAGI	Office of the Special Adviser on Gender Issues and Advancement for Women

SC	Security Council
SRSR	Special Representative of the Secretary General
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Fund
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Development Fund for Women
UNIFEM	United Nations Development Fund for Women
US	United States (of America)
WID	Women in Development

